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IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, etc., et al.
Respondents.

On Petition for Writ Of Certiorari To The
United States Court of Appeals for the Eighth Circuit

APPENDIX
Volume I

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APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

ORDER

(Filed July 5, 1983)

A memorandum dated this day is hereby incorporated into and made a part of this order.

Having carefully considered the proposed Settlement Plan, the evidence duly received in support of and opposition to that Plan, public comments thereon, having considered the pertinent record in this cause, and being duly advised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. In accordance with the provisions of the memorandum, the Settlement Plan, including the Appendix and Exhibit 2, is hereby approved as fair, adequate, reasonable, and constitutionally permissible.

2. The Settlement Plan and its Appendix as revised by Exhibit 2, as approved, shall be implemented as of this date for the 1983-1984 school year, and all signatories, as well as State defendants, are required to comply with all the provisions thereof.

3. If the school districts of Mehlville and Rockwood wish to litigate rather than participate in the approved Settlement Plan, they, or either one of them, shall so notify the Court of this decision in writing by July 11, 1983, and, upon such written notification, their 12(c) liability phase trial is hereby scheduled to begin on July 25, 1983, at 10:00 a.m.

4. The State of Missouri and City Board shall share the costs of implementing the approved Settlement Plan, as more fully set forth within the Plan and this order.

5. Since allocation of costs is not specified within the Plan, those costs shared by City Board and the State of Missouri pursuant to the financing provisions of the Settlement Plan, Section X(B)(3), as approved, shall be allocated as follows:

(a) regardless of the program's or school's location, the State of Missouri shall pay in full the actual, reasonable costs of implementing the magnet programs and schools in Section III of the Settlement Plan, as approved, and in Section C of its Appendix and of Exhibit 2, *Liddell* v. *Board of Education,* 677 F.2d 623, 641-42 (8th Cir.), *cert. denied,* 103 S.Ct. 172 (1982);

(b) regardless of the program's location, the State of Missouri shall pay in full the actual and reasonable costs of implementing the part-time educational programs as identified in Section V of the Settlement Plan, as approved, and in Section B of its Appendix and of Exhibit 2, *id.;*

(c) except as noted concerning capital expenditures in paragraph 5(d) below, for other programs implemented pursuant to the Settlement Plan, as approved, City Board shall pay fifty percent of the reasonable actual costs of the programs implemented within the geographic boundaries of the City of St. Louis only, and shall not pay any costs incurred for programs implemented beyond the geographic boundaries of the City of St. Louis. The State of Missouri shall pay fifty percent of the reasonable actual costs of such programs implemented within

the geographic boundaries of the City of St. Louis, and shall pay one hundred percent of the reasonable actual costs of programs implemented outside the geographic boundaries of the City of St. Louis;

(d) City Board shall retain the obligation and responsibility to fund capital expenditures needed to restore, repair, maintain, or enhance existing facilities as part of City Board's desegregation efforts. Any amount raised for capital expenditures by City Board through a voter-approved bond issue at any time during 1983-1984 shall be matched equally by the State of Missouri;

(e) the State of Missouri shall pay in full the costs of transportation of the interdistrict transfer students; the reasonable, actual costs to implement incidental programs, such as the student recruitment efforts, any community involvement centers, the Voluntary Interdistrict Coordinating Council (VICC) and its staff, the Recruitment and Counselling Center and its staff and offices, and parent involvement programs; and reasonable attorney's fees that may be awarded to the prevailing plaintiffs City Board, Caldwell, and Liddell.

6.For the payment of City Board's share of the costs:

(a) the City Board shall certify to the Court, on or before July 15, 1983, the amount needed to meet its share of the reasonable actual costs of implementing programs pursuant to the Settlement Plan, as approved, as well as the tax rate necessary to fund these costs;

(b) the City Board shall submit to its voters, on or before February 1, 1984, a proposed bond issue of an amount determined by the City Board as sufficient to meet those of its capital improvement needs as are deemed necessary to meet its constitutional obligation to desegregate the City's public schools;

(c) should that bond issue fail to obtain the two-thirds majority vote required by State law, the Court will consider an appropriate order to obtain the funds deemed sufficient to meet

the capital improvement needs of City Board in complying with its constitutional obligation to desegregate the City's public schools;

(d) the City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis as of July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Proposition C. The amount of revenue retained by the City Board by reason of not reducing its operating levy shall be utilized to fund the implementation of programs needed to meet City Board's constitutional obligation to desegregate the City's public schools pursuant to the Settlement Plan, as approved. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984;

(e) in the event the above funding orders fail to provide the necessary funds, the Court will consider an appropriate order, following notice and an opportunity to be heard on the amount, to increase the City Board's property tax rate by an amount reasonably necessary to fund the City Board's share of the costs of implementing the Settlement Plan programs pursuant to City Board's consitutional obligation to desegregate the City's public schools; and

(f) in its discretion, City Board may use other sources available to it to fund its share of the programs implemented pursuant to the Settlement Plan, as approved. To conform this order with the prior decree of the Eighth Circuit, *Liddell, supra,* 677 F.2d at 631, any outside funds received by City Board for the purpose of implementing these programs may first be applied to reduce the City Board's share of the costs of the programs and then applied to reduce the State's share of the costs of the programs.

7. State defendants shall have discretion in the determination of the source or sources of the State funds with which to pay its share of the actual reasonable costs of implementing programs pursuant to the Settlement Plan, as approved, except to the extent that discretion is otherwise limited by the provisions of Section X of the Plan, as approved.

8. The State of Missouri shall separately pay transportation costs and the transfer student payments made to sending and receiving districts, as set forth in the Settlement Plan; and shall make its other payments in accordance with the provisions of order H(1810)82, dated December 17, 1982.

9. Each participating school district shall make a continuing effort to reduce the actual costs of implementing the Settlement Plan, as approved, without impairing the quality of the Settlement Plan's components.

10. Each participating school district shall have a continuing obligation to take all appropriate steps to secure and maintain any additional sources of desegregation assistance that may be available. If any participating school district obtains desegregation assistance from an outside source to fund a component of the Settlement Plan, as approved, the amount of such funding shall be deducted from the State's funding requirements under this order, except with regard to City Board's receipt of outside funds as detailed in paragraph 6(f) above.

11. For the effective and timely implementation of the Settlement Plan, as approved, the following budgeting procedure shall apply with regard to all actual and reasonable costs, except transportation costs and costs incurred for the student transfer payments made to sending and receiving districts, incurred pursuant to the approved Plan:

(a) each participating school district shall deliver to State defendants a proposed budget for all desegregation programs and activities intended for implementation pursuant to the Set-

tlement Plan, as approved. These budgets shall be delivered to the State on or before July 15, 1983, for the 1983-1984 fiscal year. For subsequent fiscal years, the budgets shall be delivered to the State on or before March 1 of the preceding fiscal year;

(b) the budget for the VICC and for the Recruitment and Counseling Center (RCC) shall be filed with the Court and submitted to the State on or before July 25, 1983, for the 1983-1984 fiscal year. For subsequent fiscal years these budgets will be filed on or before March 1 of the preceding fiscal year;

(c) on or before July 25, 1983, representatives of the State and of each participating district shall identify in writing their areas of agreement and disagreement relating to budgetary matters. Since City Board has filed and the State has received the City Board's 1983-1984 budget (Exhibit 3, as corrected), representatives of the State and City Board shall meet and file their joint report on or before July 20, 1983. For subsequent fiscal years these statements of areas of agreement and disagreement relating to budgetary matters shall be submitted on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute fot the Court's consideration.

For fiscal year 1983-1984, the State shall submit in writing any objections to the budgets for the VICC and for the RCC within ten days of receiving those budgets. For subsequent fiscal years, representatives of the State and of the VICC and RCC shall identify in writing their areas of agreement and disagreement relating to budgetary matters on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute for the Court's consideration;

(d) the Court's financial adviser may participate in the budget meetings between the State and the various representatives, and

may present comments on the budgets to the Court either in writing directly, or at any subsequent hearing that may be required; and

(e) for the 1983-1984 fiscal year, any budget disagreements that remain, after the required meetings and reports, will be referred to United States Magistrate David D. Noce for a hearing on or before August 5, 1983. For subsequent fiscal years, the Court will consider any remaining disputed budget issues in a manner the Court deems appropriate.

12. The Court hereby stays further proceedings in this cause pursuant to Section XII of the Settlement Plan, as approved, except to the extent further proceedings may be required pursuant to paragraph 3 above.

13. Upon the establishment of the VICC, as described in Section IX of the approved Settlement Plan, the present Coordinating Committee for voluntary interdistrict school desegregation in the St. Louis metropolitan area shall terminate, and the 12(a) voluntary plan shall be dissolved. The VICC shall acquire all property and assume the obligations and administrative responsibility for all existing programs under the 12(a) voluntary plan in accordance with the provisions of Section IX of the approved Settlement Plan.

14. Since they are prevailing parties as to this phase of the case, plaintiffs City Board, Caldwell, and Liddell are granted leave until August 30, 1983, to file any claim for fees and costs, together with time sheets, affidavits, and any necessary supporting documents for the Court's consideration. Any pending issues regarding attorney's fees arising from discovery or otherwise in this phase of the case shall be dealt with at that time.

15. All pending Fairness Hearing motions and objections not heretofore ruled or otherwise dealt with herein are herewith denied.

Neither these parties nor this judge can delegate the powers of the federal court to enforce constitutional rights. The Court retains jurisdiction of this matter.

Dated this 5th day of July, 1983.

William L. Hungate
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

MEMORANDUM

(Filed July 5, 1983)

I.

This matter is before the Court, following a fairness hearing, to determine whether a proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of this school desegregation case. The Settlement Plan is offered by the Liddell plaintiff class, the Caldwell plain-

tiff class, and all the school districts in St. Louis City and St. Louis County, Missouri.[1]

In 1980, defendant Board of Education of the City of St. Louis (City Board) and State of Missouri defendants were found liable for the establishment and maintenance of a racially segregated public school system within the City of St. Louis, in violation of plaintiff class members' consitutional rights. *Adams* v. *United States,* 620 F.2d 1277 (8th Cir.)(en banc), *cert. denied,* 449 U.S. 826 (1980); *Liddell* v. *Board of Education,* 491 F.Supp. 351 (E.D. Mo. 1980), *aff'd,* 667 F.2d 643 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981). To remedy this constitutional violation, in 1980 the district court (Meredith, J.) ordered the implementation of a mandatory intradistrict desegregation plan within the City of St. Louis public school system, and the development and submission of plans involving voluntary interdistrict transfers between suburban school districts and the St. Louis City school district. *Liddell, supra,* 491 F.Supp. at 353-54, as amended by Orders dated September 17, 1980, and December 19, 1980. To date, the Court has approved and certain parties have implemented two interdistrict transfer plans (the 12(a) voluntary plan and the 12(b) vocational education plan). In the present 12(c) phase of this case, the Court is considering the implementation of a third interdistrict transfer plan.

A more complete history of this lengthy litigation is found in the appendix of this opinion. Its consideration is essential to a thorough understanding of the background of this decision. Its import is incapable of compression into a newspaper headline, a radio bulletin, or a thirty-second TV spot. At the same time, its complete inclusion in the body of this opinion would submerge

---

[1] Except the Special School District of St. Louis County, which has special jurisdiction over vocational and handicapped education in that County's school districts, and is to be dealt with hereafter.

the answers to the deceptively simple questions which are presently determinative of this phase of the litigation.

Should the Agreement in Principle, submitted by the plaintiffs and twenty-two of the twenty-three suburban school districts, be approved?

Should the Settlement Plan,[2] submitted by the plaintiffs and twenty-one of the twenty-three suburban school districts, be approved as fair, reasonable, and adequate, and as not inconsistent with the Agreement in Principle?

The answer to both of these questions is, "Yes."

All but one of the twenty-three St. Louis County school districts joined in the Agreement in Principle when first submitted. That one district, Riverview Gardens, later approved the Settlement Plan, thereby ratifying the Agreement in Principle. This made approval of the Agreement in Principle unanimous by all twenty-three St. Louis County school districts. The Agreement in Principle and the Settlement Plan are accepted by all proponent plaintiffs.

Among the plaintiffs, only plaintiff-intervenors City of St. Louis and United States decline to join in this effort to settle the case. Recent months find them reluctant either to litigate or to settle.

---

[2] The Settlement Plan is repeatedly referred to by the media and some public officials as the "Hungate Plan." Although the compliment implied, inflates me with legitimate pride, it nevertheless must be denied! This judge did not write one line of the Agreement in Principle or the Settlement Plan. This comprehensive educational program, designed to resolve a difficult constitutional and social problem by voluntary, rather than mandatory, means, is the product of leading members of the St. Louis educational and legal communities. Equally important was the ability of numerous school board members, school officials, teachers, and administrators to take an area-wide view of the steps and sacrifices necessary to redress this problem.

Six years ago, the City of St. Louis and the United States each sought and obtained leave to intervene as plaintiffs in this case, then already five years old. *See* City's renewed motion to intervene, dated July 7, 1977, granted by order dated July 13, 1977; United States' motion to intervene, filed and granted August 10, 1977. After attaining plaintiff-intervenor status, for four years both parties actively participated in the numerous proceedings of this case at both the trial and appellate court levels. Yet, in the present 12(c) phase, the City of St. Louis joined in the State defendants' motion to dismiss the City as a party in these proceedings. Moreover, the United States, although opposing State defendants' efforts to dismiss it as a party in this phase, has persistently refused to disclose clearly its position regarding the pending claim until the conclusion of the evidence. *See, e.g.,* United States' responses to recovery requests,H(1466)82 at 1-2, dated October 12, 1982; H(1488)82 at 2, dated October 18, 1982; H(1515)82 at 3, dated October 20, 1982; H(1528)82 at 4, dated October 25, 1982; deposition of the United States, transcript dated November 30, 1982 at 14, 58-59; order requiring disclosure "with particularity" of United States' position, H(1871)82, dated December 29, 1982; statement of United States in response to order, H(1926)83, dated January 10, 1983. Now, while endorsing the concept and some portions of the proposed settlement, these two plaintiff-intervenors do not approve certain provisions of the proposal.

Since all twenty-three of the St. Louis County school districts approve the Agreement in Principle, along with the proponent plaintiffs, their futher agreement to the Settlement Plan would not be necessary, except insofar as its proposals may be inconsistent with the Agreement in Principle. After duly considering the pleadings, exhibits properly admitted in evidence, public comments filed, and the testimony adduced in a five-day fairness hearing, this Court finds the Settlement Plan is not inconsistent with the Agreement in Principle.

After having unconditionally accepted the Agreement in Principle, two of the twenty-three St. Louis County School Districts, Rockwood and Mehlville, proposed additional conditions upon their entry into the Settlement Plan. They made it clear they did not oppose the Settlement Plan, and Rockwood has consistently reiterated that it is a proponent of the Settlement Plan. Since the Court finds the Settlement Plan is not inconsistent with the Agreement in Principle, to which all St. Louis County school districts have agreed, and since further expressions of agreement were not required, these two districts' conditions are approved insofar as they are not inconsistent with the Agreement in Principle and the other provisions of the Settlement Plan, to which twenty-one of the twenty-three St. Louis County school districts have agreed. Thus, Rockwood and Mehlville are also members in good standing of the Settlement Plan.

If Mehlville or Rockwood, or both, wish to litigate this issue further, they shall so notify this Court in writing by July 11, 1983, and the trial of the 12(c) liability of either or both of said school districts wishing to contest the matter shall begin July 25, 1983.

Expensive adversary trials ultimately deny justice to countless deserving people. This litigation has already consumed eleven years, adn absent a settlement promises to consume many more. Society's greatest opportunities lie in encouraging human inclinations toward compromise, rather than stirring our tendencies for competition and rivalry. If lawyers, educators, and public officials do not help marshall cooperation and design mechanisms that promote peaceful resolution of conflicts, we shall miss an opportunity to participate in the most creative social experiments of our time. "A Flawed System," by Derek C. Bok, *Harvard Magazine,* May-June, 1983, at 38-71.

The Court commends the school officials and attorneys in this case, including the amicus curiae, Shulamith Simon, and

the Special Master, D. Bruce La Pierre, along with the educational and religious leaders of this community, all of whom must receive full credit for bringing us to what has been called the threshold "of an historic settlement like none other achieved in this country, and far beyond the wildest dreams of the participants: a settlement agreement which would set the standards by which all other desegregation plans would be measured; a settlement agreement which would bring to an end on an amicable voluntary basis, 11 years of emotional, complicated and sometimes divisive litigation." Opening Statement of the State of Missouri defendants, Transcript of Fairness Hearing, May 13, 1983, at 6.

Finding parties, as diverse as those present here, reaching such a degree of unanimity as has been achieved by the proponent plaintiffs and the twenty-three St. Louis County School districts, would give any court pause before disapproving the efforts of these parties to find a voluntary solution to a complex constitutional problem in which legal, educaitonal, political, and financial problems are inextricably entwined.

II.

Having found the Settlement Plan is not inconsistent with the Agreement in Principle, the next question presented is whether the Settlement Plan is fair, reasonable, and adequate and constitutionaily sufficient.

(A) Pursuant to Fed. R. Civ. P. 23(e), the Court may only approve a class action settlement that is fair, reasonable, and adequate. *Grunin* v. *International House of Pancakes,* 513 F.2d 114, 123 (8th Cir.), *cert. denied,* 423 U.S. 864 (1975). The Court must also insure that the terms of the agreement meet constitutional standards. *See Liddell* v. *Caldwell,* 546 F.2d 768, 773-74 (8th Cir. 1976), *cert. denied,* 433 U.S. 914 (1977). In reaching its decision on the proposed agreement, the court may not decide unsettled issues in the case. *Grunin, supra* at 123-24. Further-

more, the Court must balance the public interest in favor of settlement against the interests of class members and the public as a whole. *Armstrong* v. *Board of School Directors,* 616 F.2d 305, 312-14 (7th Cir. 1980).

In *Grunin* the United States Court of Appeals for the Eighth Circuit specified that a district court determines the adequacy of the settlement by considering:

> (1) the strength of the merits of plaintiffs' case balanced against the resolution offered in settlement;
>
> (2) the complexity, length, and expense of further litigation;
>
> (3) the amount of opposition to the proposed settlement; and
>
> (4) defendants' overall financial ability to pay.

Grunin, supra at 124; Manual for Complex Litigation, § 1.45 at 56 (5th ed. 1982).

Other factors the Court may consider include:

> (5) the presence of collusion in reaching the settlement;
>
> (6) the opinion of competent counsel as to the settlement's fairness and adequacy;
>
> (7) the class members' reaction to the settlement; and
>
> (8) the stage of the proceedings and the amount of discovery completed in the case.

3B Moore's Federal Practice ¶ 23.80[4] at 23-521 through 23-524.

(1) **The Strength of Plaintiffs' Case Balanced Against the Resolution Offered in Settlement.** By their interdistrict claims, City Board and Caldwell assert that defendants perpetuated and expanded, with "segregative intent" and "segregative impact,"

a metropolitan-wide racially dual public educational system that was created pursuant to state constitutional and statutory authority before the United States Supreme Court decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954). City Board and Caldwell further contend that named defendants have not met their claimed post-*Brown* duty to dismantle this racially dual interdistrict educational system. In support of their allegations, these plaintiffs would seek to show student assignment patterns, faculty salary differences, governmental funding decisions, discriminatory housing and land use policies, and failures or refusals to consolidate school district boundaries, among other acts or omissions by defendants. As a remedy for the alleged constitutional violations, City Board and Caldwell seek:

(a) declaratory relief that defendants' acts and conduct are "unconstitutional and unlawful;"

(b) injunctive relief for the development and implementation of a remedial plan; and

(c) an award of attorney's fees and expenses.

With regard to the injunctive relief, these plaintiffs would seek consolidation of all St. Louis County, Jefferson County, and St. Charles County districts and the City of St. Louis district into five districts and would seek extensive student reassignment and transportation as necessary to achieve complete school desegregation. *See, e.g.,* Report of the Board of Education of the City of St. Louis Pursuant to Paragraph 12(c) of the Court's order dated May 21, 1980, as amended, dated November 16, 1981; Final Report on 12(c) Plan filed by City Board on February 10, 1982. They would also seek desegregation of teacher faculties, creation of uniform curricular and other educational standards, and the initiation of special educational programs, including magnet schools.

The St. Louis County school districts, as well as other defendants, denied the alleged constitutional violations and would

have presented evidence in an attempt to show: that a metropolitan-wide racially dual public educational system never existed; that if such a system ever existed it had been fully dismantled; that after *Brown* each county school district had established a unitary school system; and that the remedy sought by plaintiffs would not have been supported by the violations, if any, that might have been found.

Without explicitly addressing the school districts' alleged liability, the proposed Settlement Plan provides for:

> (i) voluntary interdistrict transfers of students, with specified ratios and goals for the racial balance of student populations in participating districts;
>
> (ii) a hiring and transfer program, with specified goals for the racial balance of administration and teaching staff of participating districts;
>
> (iii) the establishment of specialized educational programs, including: programs focused on the all-black schools remaining within the City of St. Louis; magnets; part-time programs; and cooperative programs with paired schools and with local cultural, civic, and business institutions;
>
> (iv) provisions to unsure equitable treatment of all students;
>
> (v) one administrative body to coordinate and review implementation of the programs;
>
> (vi) various enforcement and grievance procedures; and
>
> (vii) an award of reasonable attorney's fees to City Board, Liddell, and Caldwell plaintiffs.

Thus, although the Settlement Plan does not presently resolve the City Board's and Caldwell's request for declaratory relief or their allegations of defendants' liability, the Settlement Plan

provides proponent plaintiff class members with immediate, extensive opportunities to receive a quality education in a broad range of desegregated settings throughout the St. Louis metropolitan area.

(2) **The Complexity, Length, and Expense of Future Litigation.** At present there are three remedial plans already approved and implemented in the metropolitan area:

(a) the intradistrict plan within the City of St. Louis only;

(b) the 12(a) voluntary plan providing for interdistrict transfers among the City and fifteen St. Louis County school districts; and

(c) the 12(b) vocational education plan providing for interdistrict transfers between the vocational programs of the City and those of the Special School District of St. Louis County.

This phase of the eleven-year-old lawsuit involves:

(i) two certified plaintiff classes;

(ii) seven "active" St. Louis County school district defendants against which discovery is complete, pretrial materials are filed, and trial may proceed;

(iii) ten St. Louis County school district defendants that are subject to stay orders due to their participation in the 12(a) voluntary plan;

(iv) five St. Louis County school districts that have not yet been served as defendants due to a stay order entered upon their participation in the 12(a) voluntary plan from its inception;

(v) one St. Louis County school district that has not yet been served as a defendant due to a stay order entered in consideration of the district's unique status as a product of

a prior court-ordered desegregation plan of consolidation of three school districts; and

(vi) several other parties who are prepared for trial, i.e., State of Missouri defendants; St. Louis County government defendants; plaintiff-intervenor City of St. Louis, etc.

Plaintiffs could immediately go to trial against only seven St. Louis County school districts, and would at least have to seek to lift or vacate stays and pursue discovery efforts before going to trial against the other sixteen St. Louis County school districts. Absent the Settlement Plan, there is doubt that such a broad remedy could be imposed by the Court until all school districts had an opportunity to be heard in a 12(c) liability hearing. Thus, if the Settlement Plan is not approved, plaintiffs must proceed against district sets of St. Louis County school districts in order to litigate fully the pending 12(c) interdistrict claims.

In contrast to this potentially prolonged judicial process, the Settlement Plan promises immediate and broad implementation of its programs since it is proposed by the proponent plaintiffs, City Board, Liddell, and Caldwell classes, and all twenty-three St. Louis County school districts, regardless of their status as "active" or non-active parties or as nonparties.

The history of this case, moreover, shows the parties' propensity to appeal decisions of this Court. Since the parties are not unanimous in their participation in this Settlement Plan the Court doubts that approval of the Settlement Plan will foreclose appeals at this stage of the case. The Court, however, determines that, with approval of the Settlement Plan, there will be a reduction in the number and scope of any appeals, as well as immediate implementation of the proposed programs pending resolution of the appeal process.

(3) **The Amount of Opposition to the Proposed Settlement.** To express any opposition to the proposed Settlement Plan, in-

terested persons could either file written comments or appear in person at the fairness hearing. In addition to proponents' presentation at the fairness hearing, the Court heard testimony and oral statements from eleven non-party individuals who expressed opposition to the plan, with nine of those appearing on behalf of organizations.

State defendants and plaintiff-intervenor City of St. Louis also presented evidence in opposition to the proposed Settlement Plan.

Additionally, the Court received forty-two written statements from interested individuals and organizations, including statements from some of those who presented statements at the fairness hearing. Some of the statements filed were joined in by several individuals.

In considering the extent of opposition, the Court must view the agreement in its entirety, rather than isolating individual components of the agreement for analysis. *Armstrong, supra,* 616 F.2d at 315. The settlement, moreover, is a product of compromise efforts by adversaries. Usually neither side will attain all of its goals in such a settlement. The Court must respect the terms derived from the parties' negotiations as long as the agreement does not violate consitutional standards and is found adequate, reasonable, and fair. *See Armstrong* v. *Board of School Directors,* 471 F.Supp. 805, 812-13 (E.D. Wis. 1979), *aff'd,* 616 F.2d 305 (7th Cir. 1980).

The amount and type of opposition expressed against this Settlement Plan is not overwhelming in light of the scope and notoriety of this lawsuit. Many statements are thought-provoking and informative. Others seem to misinterpret:

> (a) the voluntariness of the Settlement Plan, which contains no court-imposed student or staff reassignments, transportation requirements, district consolidations, or school closings, to name just a few of the court-mandated remedies available if the requisite interdistrict liability is found;

(b) the scope of and issues addressed by this phase of the lawsuit, which phase focuses on interdistrict school desegregation as it affects court-determined segregation within the City's public schools, and which does not focus on employment discrimination, housing problems, or on alleged intradistrict violations within other districts; or

(c) the constitutional desegregation principles, which as yet do not focus solely on improving the quality of education in existing one-race schools.

The Court has considered all statements presented by members of the public and understands that those not associated on an ongoing basis with this prolonged and complex case might misapprehend certain points.

(4) **Defendants' Overall Financial Condition and Ability to Pay.** While a customary factor to consider in determining the adequacy of a proposed settlement, defendants' ability to pay is not a relevant factor in determining whether or not to approve a class action settlement in a school desegregation case. *Armstrong* v. *Board of School Directors,* 471 F.Supp. 800, 805 (E.D. Wis. 1979), *aff'd,* 616 F.2d 305, 326 n.31 (7th Cir. 1980).

(5) **The Presence of Collusion in Reaching the Settlement.** The Court may analyze the agreement and the negotiating process to determine whether the agreement is unfair because of fraud or collusion. Here there is no contention by any Settlement Plan participant or by any objector that collusion exists to taint the proposed Settlement Plan.

Certain parties, who are not signatories to the Settlement Plan, and a nonparty teachers' union have expressed chagrin at their absence from the negotiating process that resulted in the Settlement Plan. *See, e.g.,* Proposed Findings of Fact and Conclusions of Law filed by the City of St. Louis on June 1, 1983; Motion to Intervene filed by teachers' union Local 420 on April 18, 1983.

The City of St. Louis did not complain in any manner when the State defendants sought to dismiss the City as a party in this phase of the case. *See* Motion to Dismiss the United States, Craton Liddell, et al., and the City of St. Louis as Parties Plaintiff in the Inter-District Phase of the Litigation, filed by State defendants on May 10, 1982. In fact, the City explicitly joined in the State defendants' motion to dismiss the City as plaintiff-intervenor. The Court denied that motion and the City of St. Louis remained as a plaintiff-intervenor in the 12(c) phase of this case. As a party participant, the City of St. Louis opposes particular provisions of the proposed Settlement Plan.

With regard to the teachers' union, Local 420, it did not seek party status in this case until April 18, 1983. Granted leave to file as amicus curiae, Local 420 has intermittently presented its position on various issues throughout the course of this litigation. Recently, the Court denied the union's motion to intervene, and has permitted the filing and consideration of statements submitted by Local 420 regarding the proposed Settlement Plan.

No party complaining of exclusion from any negotiating session has timely sought relief from the Court on this question. The Court views with some degree of skepticism those who wait until two are out in the ninth inning before complaining that they were not asked to name the starting pitcher.

Assuming such exclusion is unusual in multiparty, complex litigation, the Court fails to see how such absence, in and of itself, constitutes collusion or fraud to render a proposed agreement unfair or unreasonable. In this case, moreover, the negotiating process was not initiated or, for the most part, conducted by the parties alone. The Court appointed a nonparty Special Master "to explore the possibility of settlement." This diligent and competent Special Master was assisted in his efforts by a court-appointed Amicus, representing the public interest. The presence of these persons throughout the major part of the negotiating process renders any suggestion of possible collusion or fraud less tenable than in other settlement situations.

(6) **Opinion of Competent Counsel.** In support of the Settlement Plan, counsel for proponents submitted an affidavit, acknowledging their familiarity with the record in the case, the parties' positions in this phase, and the Settlement Plan's terms. In their opinion, the proposed Settlement Plan is a fair, reasonable, and adequate resolution of this phase of the case.

Although the Court may not delegate to counsel the Court's duty and responsibility to determine the adequacy of a proposed agreement, the Court may consider competent counsel's opinion. *Armstrong, supra,* 616 F.2d at 325. Here, the great majority of proponents' counsel have been involved in this case since at least the filing of the interdistrict claims three years ago. All counsel appear to the Court thoroughly familiar with their clients' positions, skilled to conduct this litigation in a competent manner, and knowledgeable of the record of the case and applicable law.

Thus, the Court considers and gives some weight to counsel's opinion, although it is not dispositive and is only one of the several factors considered by the Court in passing on the Settlement Plan's adequacy.

(7) **Class Members' Reaction to the Settlement.** Both white and black members of the classes have participated in these proceedings and some have objected to particular aspects of the proposed Settlement Plan.

Furthermore, at the fairness hearing, Minnie Liddell and Dr. James DeClue, two of the named plaintiffs, acknowledged they had reservations regarding certain provisions of the Settlement Plan but, as an aspect of compromise, they had determined other benefits gained by the Settlement Plan rendered it fair, reasonable, and adequate.

All of the objections have been considered by this Court. The Court recognizes that not all members of the class would approve the proposed settlement. If the Court would not approve

the Settlement Plan without unanimous agreement of the class members, then it could never approve a settlement in this case.

The Court may approve a fair settlement over objections by some or many class members, and even despite criticism by some named plaintiffs. *Armstrong, supra,* 471 F.Supp. at 804, *aff'd,* 616 F.2d at 326. Here, the number of objectors is not undue in the circumstances of this case, given its extensive notoriety, the many thousands of plaintiff class members, the importance of the plaintiffs' claims, and the nature of the litigation. The amount of opposition by class members and members of the community here is comparable to that in *Armstrong* where forty-five persons testified at the fairness hearing and many others submitted written statements, "most to express their dissatisfaction with the settlement," which was ulitmately approved as fair. *Armstrong, supra,* 616 F.2d at 326.

(8) **Stage of the Proceedings and the Amount of Discovery Completed.** The Settlement Plan was proposed after extensive discovery was completed and pretrial materials, including synopses of witnesses' testimony, were submitted on behalf of both plaintiff and defendnat parties in this phase of the case. Furthermore, both plaintiff and defendant proponents have submitted summaries of the evidence they had intended to offer if this phase of the case proceeded to trial. Also, this phase of the case follows the determination of the State's and City Board's liability for segregated conditions within the City's public schools, and implementation, with appellate court approval, of a mandatory intradistrict remedial plan and two voluntary interdistrict plans.

(B) In light of the voluminous record, prior court orders, and the information derived from the fairness hearing and public statements regarding the Settlement Plan, the Court finds there is sufficient information available to determine the fairness, reasonableness, and adequacy of the Settlement Plan.

After considering each of the relevant factors set forth above, the Court finds the proposed Settlement Plan is fair, reasonable, adequate, and constitutionally permissible.

III.

Must the Settlement Plan be approved without alteration? Yes, except insofar as the Court finds technical, perfecting, and non-substantive changes necessary and reasonable. *Cf. Liddell* v. *Board of Education,* 677 F.2d 626, 634 (8th Cir.), *cert. denied,* 103 S.Ct. 172 (1982). For instance, as a result of the fairness hearing and subsequent documentation, it developed that

(a) $133,837.17 proposed for the 1983-1984 Settlement Plan budget duplicated amounts proposed in the 1983-1984 intradistrict budget; and

(b) $246,221.92 proposed for the After-School program was erroneously included as a duplication within the Settlement Plan budget itself; and

(c) $20,000.00 proposed for bus passes for students attending the as yet nonexistent alternative high school was erroneously included in the Settlement Plan budget. No one could reasonable contend that the Court should approve expensive errors acknowledged by parties to exist.

Of the Plan's twelve major components, Sections I, II, III, V, VI, VII, VIII, IX, XI, and XII are approved without substantive change.

Section IV on Quality Education, and Section X, dealing with Financing, will also be approved with the non-substantive changes noted in the following discussion. When considering quality education and financing, the Court is constantly mindful of two sometimes conflicting restraints:

(a) the Court cannot allow rights guaranteed by the Constitution to be derogated by the action or inaction of the legislative or executive branch;

(b) parties should not gain in Court that which they have legitimately lost in the legislature or at the ballot box.

The Court has considered the financial adviser's receommendations along with the comments filed thereon. The Court-appointed financial adviser, Dr. Warren Brown, recommends the creation of a small committee to approve "all activities, procedures, records and expenditures which are undertaken pursuant to provisions of the SA [Settlement Agreement]." Rather than require the establishment of yet another committee to provide an "approval procedure" under this Plan, the Court finds that such an "approval procedure" is implicit in the powers and responsibilities of the VICC and in the requirement that participants in this Plan exercise their rights and obligations in good faith. This good faith requirement includes efficient handling of the limited resources available to implement the programs, consideration of the quality and stability of implemented programs, and a responsibility to maintain monitoring, review, and accountability practices and procedures. To accomplish these implied requirements, the participants may decide to establish policies and procedures for the whole VICC, or may establish a standing or unrelated committee, or may delegate these functions to one or more staff or committee persons. School administration cannot be static. Flexibility is essential to success.

The financial adviser makes certain recommendations regarding the transition and initial activities of the VICC. To the extent these recommendations mirror several proposals of the Settlement Plan, they are approved.

On magnet schools, the advisor states, in part, that "activating new magnets for 1983-84 should be done deliberately *and only after a rigorous needs assessment*" (emphasis added). Section III of the Settlement Plan contains a review and approval procedure if plan participants seek to add to or expand listed magnets in school years after 1984-1985. The review and approval procedure does not explicitly apply to the new or expanded magnets proponents suggest for implementation in the 1983-1984 and 1984-1985 school years. The financial adviser's

recommendation is well-taken. Noting that proponents do not mandate, but only suggest, that the listed magnets be created and/or expanded in the next school years, and recognizing the limitations of existing resources and the overall good faith requirement of plan participants, the Court directs plan participants to analyze and review the need of each expanded and new magnet proposed for 1983-1984 and 1984-1985 prior to the program's implementation. Plan participants should balance the need for and benefit of such magnets in light of programs already existing throughout the St. Louis metropolitan area, the need to coordinate recruitment efforts, and limited resources, among other factors.

As an alternative to the Plan's student transfer payment provisions, the financial adviser generally recommends that all state aid payments and trust fund allocations be sent to the student's home district and the home district pay a reasonable tuition to each host district receiving transfer students. This recommendation responds to State defendants' contention that the Plan's financing provisions might overcompensate participating school districts. The Court should insure stable and adequate participation in the Plan without providing an undue financial windfall to district participants. At this time, the Court deems the financing provisions reasonable and adequate to compensate districts for certain costs, particularly start-up costs, attributable to their implementation of this Plan, and will therefore approve the student transfer payment provisions of the Plan's financing section. The Court, however, recommends that the participants review the financial adviser's suggested alternative, as well as others, after some experience with implementation of the Plan.

The financial adviser generally endorses the State defendants' proposal to reduce transportation costs of interdistrict transfer students by zoning or "zipcoding" areas within which students are transported. In practice, this will limit the choice of schools available to transferring students from a given residential area. Because of the limit on student choice and the probable hin-

drance to school district participants' recruitment efforts, the Court does not approve a transportation plan that effectively limits student choice under the Settlement Plan. Despite the lack of approval for the suggested zipcoding system of transportation, the Court will commend any efforts the parties can make to reduce the costs of transportation, so long as opportunites for, and safety of, the student will not be compromised.[3]

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[3] "Today, for most school children, busing is a convenience provided by the school system. Because of the greater economy and educational benefits achieved through consolidation, the number of schools and districts has declined enormously since the last century, so that today, for over half of the nation's children, the 'neighborhood' school is no longer a reality; the distances to school are such that they ride a bus to school. Less than 7 percent of those children, or 3.6 percent of the total number of school children, are bused for the purpose of desegregation.

"The amount of time spent on school buses and their costs have figured prominently in criticism directed at busing for school desegregation. But statistical studies indicate that the median travel time for elementary school students was less than 15 minutes; only 15 percent of those students traveled more than 30 minutes.

"Critics should also be mindful of the fact that present constitutional law recognizes that a desegregation plan may not mandate busing involving time that would adversely affect the health of the students or the achievement of educational objectives. To the extent unreasonable transportation times are being imposed, then, modifications can and should be sought under existing law.

"The costs of busing have also been grossly misperceived by the public. One witness did a national survey of public attitudes about busing for desegregation, and learned that most people believe that more than a quarter of the school budget is spent on this function. In fact, the percentage is closer to 0.2 percent. Thus, the suggestion that 'the money that is being spent on busing could be directed toward improving that quality of education perhaps through improved teacher salaries or better schools or books . . .' must be recognized as inviting only minor improvements.

"In sum, criticism of busing for desegregation must be considered in light of the following: most American children are bused for non-

In the Appendix to the Settlement Plan, and again in proponents' Exhibit 2, City Board specified programs for the "Improvement of the Quality of Education throughout the St. Louis public schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools." The St. Louis County school district proponents stated that, although they, as well as other parties,

> recognize the importance of the concept of the improvements of the quality of education in schools in the City of St. Louis and their responsibility to submit specific provisions concerning same to the Court [,] . . . [t]hey do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design.

Despite this apparent lack of agreement on the programs listed in the Appendix and its companion Exhibit 2, those documents contain details of programs listed in other Settlement Plan sections, sections to which all proponents have agreed.

For example, Section V of the Settlement Plan, a section to which all proponents agree, contains proposals for the following part-time educational programs: "Pairing and Sharing," "Springboard to Learning," "The School Partnership Program," "Ethnic Heritage," "Radio Station KSLH," "English as a Second Language," "Honors Art," "Honors Music," and "Mass Media." Each of these enumerated programs is also listed in the Appendix and Exhibit 2.

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racial reasons without apparent educational or health harm, or parental disapproval; relative to the total costs of public schools, the costs of busing for desegregation are not great; dissatisfaction with this method is voiced more often by those fearing future orders or otherwise not presently involved, than those participating in such a plan." (footnotes omitted.) Report of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 97th Cong., 2d Sess., Mar., 1982, at 18-19.

This "double inclusion" situation is also true of the City magnets proposed as new or expanded programs for the 1983-1984 and 1984-1985 school years. The City magnets are listed in both Section III, to which all proponents agree, and the Appendix and Exhibit 2.

To the extent the programs in the Appendix and/or Exhibit 2 are agreed to by all proponents of the Plan, those programs may be immediately implemented in accordance with the terms of the relevant section of the Settlement Plan and any implicit conditions deemed applicable. The Court finds agreement by the proponent plaintiffs and all St. Louis County school districts on such programs, and the Court would expect them to be among the earliest implemented.

The rest of the Quality Education programs should be considered for implementation by the City Board as soon as the proper priorities can be established and plans coordinated for the interdistrict desegregation of schools and the establishment of quality education in the one-race schools remaining.

Pursuant to the financial adviser's recommendations, the Court directs the parties to focus on the following programs at an early date:

IMPROVEMENT OF STAFFING RATIOS

A301 Reduce pupil-teacher ratios to county average
A302 Restore art, music, and physical education staff
A305 Increase nursing and counseling services
A402 Expand opportunities for all-day kindergarten
A503 Expand and improve extracurricular athletic activities

SPECIAL PROGRAMS FOR
NON—INTEGRATED SCHOOLS

B101 Lower pupil-teacher ratios
B102 Coordination of instructional and motivational programs
B201 After-school remedial and enrichment programs

B203 Summer educational experience
B205 Parents as teachers
B206 Peer tutoring
B208 Role model experiences
B301 Parent and staff seminars

SPECIAL INSTRUCTIONAL PROGRAMS

A403 Restore after-school tutorial program
A409 Gateway Summer Institute
A410 Student leadership
A501*Honors Art and 4th R Gallery
A601*Springboard to learning
A603*Pairing and sharing program
A604*School partnership program
C103*First phase magnet school plan

* Programs so designated are approved by all proponents.

INSTRUCTIONAL SUPPORT SYSTEMS

A102 Curriculum supervision
A201 Upgrade library/media service
A202 Audiovisual services
A702 Establish a staff development unit

SCHOOL/COMMUNITY RELATIONS

A805 Strengthen school-parent-community communications and involvement
A806 Strengthen the capabilities of the public affairs unit

PLANNING AND DEVELOPMENT

A101 Curriculum development
A401 Develop and implement early childhood education program
A813 Desegregation planning and monitoring
A901 Improvement of the quality of school facilities

These enumerated programs should be analyzed and reviewed for immediate implementation, with "immediate" meaning within the 1983-1984 school year. City Board may give priorities to these programs so that some are implemented by September, 1983, some implemented by January, 1984, some before the end of the school year, and others in the 1984-1985 school year. As the financial adviser suggests, the foregoing priorities should be established and programs analyzed so as to maintain the stability and quality of implemented programs for participating students and to limit excesses that may "topple the [quality education] program" through "overload and waste."

By approving proponents' efforts to address and improve the quality of education within the City of St. Louis, the Court is not expressing either endorsement or disapproval of all the programs mentioned in the Appendix or Exhibit 2, nor is the Court intending to limit or preclude consideration of additional quality education programs.

The financial adviser also recommends that City Board complete a long-range study of its plant facilities. To the extent building and facilities improvements are part of the desegregation remedial effort, the Court endorses such long-range study and planning, especially in light of possible changes that may occur throughout the course of this remedial effort in student and staff populations, as well as regular and specialized educaonal programs. Thus, the Court accepts the present recommendation and directs the City Board to undertake such long-range analysis and planning as are reasonable and feasible. The Court notes that, in accord with the adviser's suggestion, the funding effort for these facility improvement efforts should come mainly from local revenues, with one-time assistance from the State due both to "unique conditions" within the City and the need to treat equitably all students throughout the St. Louis metropolitan area as part of this desegregation remedial effort.

The financial adviser next recommends the addition of four state supervisors in the metropolitan area to assist implementa-

tion of this Plan. The Court does not find such additional staff proposed as part of the Plan presented by proponents, and for that reason does not interject this as a prerequisite to implementation of the Plan. To the extent the State defendants and/or plan participants deem such additional staff advisable, they may consider this recommendation.

The financial adviser recommends that City Board undertake a management study, a particularly internal matter which should be addressed by the City Board, and the Court will not require such an undertaking as part of the interdistrict desegregation plan.

In the Settlement Plan, the parties recognize that successful implementation depends on a sound and equitable financing arrangement. Anticipated transfer of up to 15,000 students, major reductions in student-teacher ratios, development and expansion of magnet schools, renovation of antiquated facilities, and improvements in curricular offerings within the City schools, as well as other aspects of the Plan, will require substantial additional expenditure of funds for the education of public school children in St. Louis.

Estimates of first year costs range from $37,000,000[4] (financial adviser) to $87,000,000 (City School Board) to well over $100,000,000 (State defendants). Because of the wide divergence and lack of agreement of the estimates, the Court enters no findings or orders at this time regarding the amount of funds likely to be necessary for 1983-1984, except to note that it will be substantial and that difficult decisions will have to be made in order to obtain the necessary amount.

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[4] The financial adviser's estimate excludes any amount for attorney's fees for prevailing parties. Within 60 days, attorneys shall file any claim for fees and costs, together with time sheets, affidavits, and any necessary supporting documents for the Court's consideration.

For twenty-nine years, black school children of St. Louis have been urging the fulfillment of the promise of constitutional equality. For twenty-nine years, Missouri has created new programs and expanded old ones with funds that should have gone to students whose constitutional rights have been violated. The constitutional responsibility must now be faced.

The primary responsibility for funding the Settlement Plan rests with those parties who have been adjudicated as liable under the Constitution for segregated conditions within the City's public schools — the State of Missouri and the Board of Education of the City of St. Louis. The sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of a segregated school system. Thus, all proposed expenditures must be justified on this basis.

In no way should any funding provisions presently authorized by the Court be construed to authorize expenditures unrelated to City Board's desegregation obligations under the Constitution and the Settlement Plan as approved.

The Settlement Plan provides that the costs are to be shared by the State and the City school board through State funding of various programs and a tax rate increase in the City of St. Louis to be ordered by the Court. In securing the protection of constitutional rights, the Court's responsibility and power to implement a desegregation plan with a directive to increase taxes should be exercised only as a last resort and in a manner designed to assure that taxpayers are not overburdened. The Court has no desire to employ its equitable powers to fine or otherwise punish for contempt, so long as the necessity therefor can be avoided.

This Court has the authority to order the State of Missouri, which has already been adjudicated a primary constitutional violator in causing school segregation in the City of St. Louis, to fund the voluntary interdistrict transfers and improvements in

the quality of education in the City schools provided for in the proposed settlement in order to further remedy the State defendant's constitutional violations. *Liddell, supra,* 677 F.2d at 629-30, 641-42. *See also Milliken* v. *Bradley,* 433 U.S. 267 (1972); *Hills* v. *Gautreaux,* 425 U.S. 284 (1976); *Liddell, supra,* 667 F.2d at 655; *Reed* v. *Rhodes,* 500 F.Supp. 404 (N.D. Ohio 1980), *aff'd,* 662 F.2d 1219 (6th Cir. 1981), *cert. denied,* 455 U.S. 1018 (1982). While the State claims it is experiencing financial constraints, it has not responded historically to the educational needs of its school age children. *See Yaris* v. *Special School District of St. Louis County,* No. 81-423C(1)(E.D. Mo. Mar. 3, 1983), slip op. at 40 n.7 (". . . only one state in the Country appropriates less funds than the State of Missouri for its educational system").

This Court has the authority to order the City Board, already adjudged a constitutional violator, to increase its tax rate, if necessary, as contemplated by Section X(B)3 of the proposed settlement. *Griffin* v. *County School Board,* 377 U.S. 218, 233 (1954); *United States* v. *Missouri,* 515 F.2d 1365, 1372-73 (8th Cir.), *cert. denied,* 420 U.S. 951 (1975). *Accord Wichita Finance & Thrift Co.* v. *City of Lawton,* 131 F.Supp. 788, 790 (W.D. Olka. 1955); *State ex rel. Martin* v. *Harris,* 115 P.2d 80, 45 N.M. 335 (1941); *Raynor* v. *King County,* 97 P.2d 696, 708 (Wash. 1940); *City of Catlettsburg* v. *Davis' Administrator,* 91 S.W.2d 56, 262 Ky. 726 (1936); *Town of Flagstaff* v. *Gomez,* 242 P. 1003, 1004 (Ariz. 1926); *City of Long Beach* v. *Lisenby,* 179 P. 198, 200 (Cal. 1919)(which hold that a court may raise the tax levy of a govenmental unit even above state-imposed constitutional and statutory tax rate maximums in order to satisfy a judgment against the governmental unit for breach of an involuntary obligation). *But see State* v. *City of Mound City,* 73 S.W.2d 1017, 1024 (Mo. 1934)(en banc). The authority to exercise such power may well be questioned when based on anything less than the protection of federally guaranteed constitutional rights. "State policy must give way when it operates

to hinder vindication of federal constitutional guarantees." *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971); *see Haney* v. *County Board of Education*, 429 F.2d 364, 368 (8th Cir. 1970).

This Court has previously ordered the use of surplus revenues in the City Board's bond retirement account for funding of its 1980 desegregation order, and the Court of Appeals has affirmed. *Liddell, supra*, 491 F.Supp. at 353; *Liddell, supra*, 667 F.2d at 655.

At this time, the Court declines to order a City Board tax rate increase beyond the rate imposed during the 1982-1983 year, but reserves the option to do so at a later date should City Board lack sufficient revenues or surplus so that Court action becomes necessary to prevent a denial of constitutional rights. The City Board would, of course, apply any surplus found on hand first to relieve itself of its status as a constitutional wrongdoer by alleviating segregated schools and providing improved quality education.

The financial adviser estimates new revenues for the City Board as follows:

Anticipated New Revenues

A. It is estimated that the City Board will experience revenue increases in 1983-1984, in addition to current local, county, and State sources, as follows:

1.	State sales tax (Proposition C) ($9,254,000 - 2,693.000)	$ 6,561,000
2.	Home district incentive payments (3,000 x $550)	1,650,000
3.	Local revenue increase	1,100,000

In addition, an existing debt service levy of $0.17, scheduled to be retired in February, 1984, could support a new $20,000,000 bond issue amortized over twenty years without an increase in property taxes, according to this Court's financial adviser.

Finally, a recommendation by the proponents that the City Board be directed not to reduce its operating levy equal to one-half of sales tax revenues under the recently approved state-wide referendum (Proposition C), Mo. Rev. Stat. § 164.013, could generate an estimated $9,254,000, according to the financial adviser. *See, e.g.*, Mo. Rev. Stat. § 164.013, providing that a property tax rollback not occur until school boards make "any other adjustments that may be required by any other law."

Assuming these estimates do not turn out to be overly optimistic, it is entirely possible that the City Board could have at its disposal in 1983-1984 more than $38,000,00 for implementing its share of the Settlement Plan without the necessity for increasing the current property tax rate within the City of St. Louis. The Court is aware these estimates assume that anticipated tax decreases of $0.17 (scheduled bond issue retirement) and approximately $0.58 (property tax rollback equal to one-half of sales tax revenues under Proposition C) will not occur as scheduled. The Court also notes that, pursuant to State law, a bond issue requires a two-thirds majority vote for passage.

Should a tax increase become necessary, available alternatives noted by the financial adviser include the following:

A. Increase the total rate by $1.71. This was approved by 51% of St. Louis voters in June 1982.	$26,505,000
B. Increase the total rate by $1.83 to equal the average rate of St. Louis County districts.	28,365,000

C. Increase City tax rates in three funds to equal average adjusted, pupil-weighted ratios in St. Louis County:

1. Teacher fund (65 cents more)	10,075,000
2. Building fund (11 cents more)	1,705,000
3. Debt service fund (12 cents more)	1,860,000

No one likes to pay the piper, but sooner or later it must be done. Mark Twain told the Public Education Assiciation in 1900:

> the [Russian] Government had decided that to support the army it would be necessary to withdraw the appropriation from the public schools. This is a monstrous idea to us. We believe that out of the public school grows the greatness of a nation.
>
> It is curious to reflect how history repeats itself the world over. Why, I remember the same thing was done when I was a boy on the Mississippi River. There was a proposition in a township there to discontinue public schools because they were too expensive. An old farmer spoke up and said if they stopped the schools they would not save anything, because every time a school was closed a jail had to be built.
>
> It's like feeding a dog on his own tail. He'll never get fat. I believe it is better to support schools than jails.

"Great American Speeches, 1893-1963," at 23, edited by John Graham, Meredith Corporation, copyright 1970.

The following financing plan shall be implemented:

1. The City Board shall certify to the Court, by July 15, 1983, the amount needed to meet its share of the costs of the Settlement Plan and the tax rate necessary to fund these costs along with its other obligations;

2. The City Board shall submit to the voters by February 1, 1984, a proposed bond issue of an amount determined by City Board as sufficient to meet the most pressing capital improvement needs of the City schools, as identified in Exhibit 2 as part of City Board's constitutional obligation to desegregate.

3. Should the bond issue fail to obtain the required two-thirds majority, the Court will consider an appropriate order to obtain the funds reasonably necessary to meet the capital expenditures incurred by City Board in meeting its constitutional obligation to desegregate.

4. The City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis on July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Mo. Rev. Stat. § 164.013. The amount of revenue retained by City Board by reason of not reducing its operating levy in the City of St. Louis pursuant to Mo. Rev. Stat. § 164.013 shall be utilized to fund programs under the Settlement Plan that are implemented to meet City Board's constitutional obligation to desegregate the City's public schools. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984.

5. In the event the above steps fail to raise the necessary funds to satisfy the City Board's share of the implementation costs, the Court will enter an appropriate order, following notice and an opportunity to be heard on the amount, to increase the property tax rate in the City of St. Louis by an amount necessary to fund the City Board's share of the costs of the Settlement Plan.

IV.

Conclusion

If we have been sufficiently honest and open-minded in recognizing our problems, and

If we have been sufficiently creative in conceiving new solutions, and

If we are now sufficiently purposeful in putting those solutions into effect,

We can reach our goals.

The history of American education is the long, turbulent record of a nation that was not afraid to risk failure or trouble or confusion in pursuit of a goal that at first seemed wildly impractical: to give every American child a chance to develop to the limit of his or her ability.

Life never was a series of easy victories. We cannot win every round or arrive at a neat solution to every problem. But driving, creative effort to solve problems is the breath of life, for a civilization or an individual. John W. GArdner, *No Easy Victories,* chapters 5, 12, 14, at 30, 67, 78 (1st ed. 1968).

"This [plan] is not perfect, but the sun has its spots, a diamond has its flaws, gold will not rust, and the good will shine through." Congressman Emanuel Celler, Brooklyn, New York, 1888-1981, (Member of Congress 1923-1973).

Dated this 5th day of July, 1983.

William L. Hungate
United States District Judge

APPENDIX A

I. Intradistrict Phase

In 1972, Liddell plaintiffs, on behalf of black children eligible to attend or attending the City's public schools, as well as their parents, initiated this lawsuit as a class action against the Board of Education of the City of St. Louis (City Board). Liddell alleged that the City Board and its administrators had "effected and perpetuated racial segregation and discrimination" in the operation of the public schools of the City of St. Louis in violation of plaintiffs' rights under the fourteenth amendment. The Court certified this plaintiff class by order dated October 3, 1973.

In 1977 the Court granted Caldwell representatives, including the NAACP, the Adams group, the City of St. Louis, and the United States leave to intervene as plaintiffs in this case. The Court, upon several parties' motion, also added the State of Missouri, the Commissioner of Education of the State of Missouri, and the State of Missouri Board of Education as parties defendant. In 1980, upon several parties' motion, the Court added as parties defendant: the Governor, the State Attorney General, the State Treasurer, individual members of the State Board of Education, the Commissioner of Administration of the State of Missouri, and the Special School District of St. Louis County.

In 1980, the City Board and State of Missouri were found liable for the establishment and maintenance of a racially segregated public educational system within the City of St. Louis, in violation of plaintiffs' constitutional rights. *Adams* v. *United States,* 620 F.2d 1277 (8th Cir.)(en banc), *cert. denied,* 449 U.S. 826 (1980); *Liddell* v. *Board of Education,* 491 F.Supp. 351, 357, 358, 359-60 (E.D. Mo. 1980), *aff'd,* 667 F.2d 643, 654-55 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981). To remedy this constitutional violation, the district court ordered the implementation of a mandatory desegregation plan

within the City of St. Louis public school system, with funding for implementation of this plan shared equally by City Board and State. *Liddell, supra,* 491 F.Supp. at 353. Additionally, the Court directed City Board and State defendants to develop and submit plans to alleviate the segregated conditions through interdistrict transfers between the City and suburban school districts. *Id.* at 353-54. *See also Adams, supra* at n.25 and n.27 at 1294-95 and accompanying text, 1296 (noting expert's opinion that interdistrict transfers would result in most stable desegregation plan); *Liddell, supra,* 491 F.Supp. at 356 (noting district court's and parties' general agreement with the appellate court's finding that "based upon the evidence, an interdistrict remedy has the best chance of permanently integrating the schools in the metropolitan St. Louis Area"). In accordance with its 1980 remedial order, the district court has already approved implementation of two interdistrict plans:

(a) the 12(a) voluntary plan involving transfers among fifteen St. Louis County school districts and the City school district, with funding provided by the State alone, Order H(226)81, dated July 2, 1981, *aff'd, Liddell* v. *Board of Education,* 677 F.2d 626, 629-30 (8th Cir.), *cert. denied,* 103 S.Ct. 172 (1982); and

(b) the 12(b) vocational education plan involving transfers between the City school district and the Special school District of St. Louis County, with funding provided by the State, the Special School District, and City Board, Order H(181)81, dated June 11, 1981, *aff'd, Liddell, supra,* 677 F.2d at 632-39.

This litigation is now in the 12(c) interdistrict phase, which involves mandatory interdistrict efforts to remedy the segregated conditions found to exist within the City. With regard to this phase of the case, the United States Court of Appeals for the Eighth Circuit has recently stated that:

> the district court can require existing defendants—the state and the city school board—to take the actions which will

help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experiences for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict transfer.[39] To the extent that suburban schools are willing to cooperate, the plans requiring their participation can now go forward.

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[39] These possible remedies are given as examples only. They are not intended to represent an exhaustive list. The district court may adopt other remedies that are appropriate.

Liddell, supra, 677 F.2d at 641-42.

II. **The Interdistrict Litigation.**

By Order H(337)81, the Court permitted City Board and Caldwell to file their interdistrict claims and to add certain parties defendant. The added defendants include St. Louis County, certain St. Louis County government officials, and the following St. Louis County school districts: Affton, Bayless, Brentwood, Ladue, Lindbergh, Hancock Place, Hazelwood, Jennings, Maplewood-Richmond Heights, Mehlville School District R-9, Normandy, Parkway, Riverview Gardens, Rockwood,

Valley Park, Webster Groves, and Wellston. The St. Louis County school districts of Clayton, Ferguson-Florissant, Kirkwood, Ritenour, Pattonville, and University City are subject to stay orders and have not been added as defendants at this time. The Court also stayed litigation as to St. Charles and Jefferson Counties, including each school district in those counties, and as to certain housing authorities. On September 24, 1981, the Court granted City Board's motion for realignment as a plaintiff in the interdistrict phase of the case only.

City Board's crossclaim and Caldwell's amended, supplemental, and cross complaint for interdistrict desegregation are similar. In general, they seek:

(a) declaratory relief that defendants' acts and conduct are "unconstitutional and unlawful,"

(b) injunctive relief for the development and implementation of a remedial plan, and

(c) an award of attorney's fees and expenses.

The pleadings assert that defendants perpetuated and expanded, with "segregative intent" and "segregative impact" a metropolitan-wide racially dual public educational system that was created pursuant to state constitutional and statutory authority before the United States Supreme Court decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). They further contend that named defendants have not met their claimed post-*Brown* duty to dismantle this racially dual interdistrict educational system. To support these contentions, the City Board and Caldwell pleadings point to student assignment patterns, faculty salary differences, governmental funding decisions, discriminatory housing and land use policies, failures or refusals to consolidate school district boundaries, among other alleged acts or omissions of defendants. Caldwell also alleged that it brought its claims on behalf of students and their parents within the metropolitan area.

For these claims, City Board and Caldwell define the "St. Louis Metropolitan Area" to include St. Louis City, St. Louis County, St. Charles County, and Jefferson County.[1] Since stay orders have been entered against St. Charles and Jefferson Counties and named defendants therein, the "St. Louis Metropolitan Area," as artificially defined for purposes of this case, is now limited to the geographic area encompassed by the boundaries of St. Louis City and St. Louis County. *See* Order H(337)81, dated August 24, 1981; *see also* H(1183)82, dated August 6, 1982; H(1985)83, at 4, ¶ 1, dated January 25, 1983. These plaintiffs assert that the causes of action arise from "the equal protection" provisions of 42 U.S.C. § 1983 and the thirteenth and fourteenth amendments; the "full and equal benefit" provisions of 42 U.S.C. § 1981 and the thirteenth amendment; the real property rights of 42 U.S.C. § 1982; and the protection afforded to federally funded programs by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

The active defendants denied the alleged constitutional violations. Defendants would have presented evidence in an attempt to show: that a metropolitan-wide racially dual public educational system never existed; that if such a system ever existed it had been fully dismantled; that after *Brown* each St. Louis

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[1] When we speak of the St. Louis metropolitan area, we are plagued with imprecise terms. The commonly used definition of the Office of Management and Budget of the St. Louis Standard Metropolitan Statistical Area (SMSA) includes St. Clair, Madison, Jersey, Monroe and Clinton Counties in Illinois. Under proper circumstances, federal courts may order intracity school desegregation, and they may, under proper circumstances, perhaps order intercounty school desegregation. This Court is unaware of precedent for interstate school desegregation. So referring to the St. Louis metropolitan area, which ordinarily includes a part of Illinois, is not altogether useful.

Franklin County, Missouri, qualifies under the standard definition of the St. Louis SMSA, and for undisclosed reasons, plaintiffs did not seek to join Franklin County, Missouri.

County school district had established a unitary school system; and that the remedy sought by plaintiffs would not have been supported by the violations, if any, that might have been found.

The class action issues in this phase of the case were referred to United States Magistrate David D. Noce pursuant to 28 U.S.C. § 636(b)(1)(A). After three days of hearings, the Magistrate recommended in relevant part that:

> "(a) the NAACP amend its pleadings within seven days only to the extent necessary to satisfy standing requirements for an organizational plaintiff; if such amendment is not made, the NAACP should be dismissed as a plaintiff-intervenor for failure to satisfy the standing requirements;
>
> (b) Lillie Mae Caldwell satisfies the standing requirements necessary to pursue this litigation as a plaintiff-intervenor; Minnie Liddell, Lois LeGrande and Samuel Yarber, as parents of children in the public school system, satisfy standing requirements to pursue this litigation as Liddell plaintiffs; the children of these remaining named Liddell plaintiffs should be substituted for the children on whose behalf these remaining Liddell plaintiffs were originally named as next friends;
>
> (c) the Liddell class, as originally certified, may continue to prosecute this litigation; and
>
> (d) the interdistrict claims set forth in the amended complaint of Caldwell plaintiff-intervenors, H(351)81, are properly maintained as a class action under rule 23(a) and 23(b)(2). The District Court should certify the Caldwell class as comprising all students, and their parents, now attending or who will attend Missouri public primary and secondary schools located in the metropolitan St. Louis, Missouri area."

After due consideration for defendants' objections to Magistrate Noce's Report and Recommendation and for Caldwell's motion to amend its pleadings, filed in response to that Report and Recommendation, the Court adopted the Report on February 9, 1983, H(2085)83. Also in accordance with Magistrate Noce's recommendation, the proposed substitution of certain named representatives for the Liddell class was subsequently approved. H(2356)83, dated May 4, 1983.

Pursuant to the mandates of the United States Court of Appeals for the Eighth Circuit to proceed with interdistrict liability proceedings, and this Court's order of August 6, 1982, the Court set the 12(c) liability phase of this case for trial on February 14, 1983. As of February 14, 1983, the active St. Louis County school districts included Bayless, Hazelwood, Mehlville, Riverview Gardens, Rockwood, Valley Park, and Webster Groves. The other St. Louis County school districts were subject to stay orders. *See, e.g.*, H(336)81, dated August 24, 1981; H(1365)82, dated September 17, 1982; and H(1978)83, dated January 20, 1983.

Prior to this first trial setting, the Court, *sua sponte*, appointed Professor D. Bruce La Pierre Special Master and director of a settlement conference program for this case only. Thereafter, settlement discussions took place. From time to time, at the request of the Special Master, joined by the parties, the Court postponed the trial scheduled for February 14, 1983, to provide the parties the opportunity to resolve their differences on the pending issues. On February 22, 1983, the settling parties submitted an Agreement in Principle which was approved at that time by each of the proponent plaintiffs and all St. Louis County school districts except Riverview Gardens. The Special Master subsequently, on March 30, 1983, filed a proposed Settlement Plan. By April 4, 1983, the Liddell, Caldwell, and City Board plaintiffs, twenty of the twenty-three St. Louis County school districts, including Riverview

Gardens, and the St. Louis County defendants advised the Court of their unconditional acceptance of the Settlement Plan. One school district, University City, initially declined to sign the Settlement Plan, but accepted it on June 1, 1983. Two school districts, Mehlville and Rockwood, suggested conditions, and the question arises whether those conditions are inconsistent with the Agreement in Principle. Counsel for Rockwood and Mehlville have insisted that these districts are signatories to the Settlement Plan, have accepted that agreement, and are not seeking a modification of it. By their conditions, Mehlville and Rockwood desire either to advise the Court of particular concerns which each has, or to ask the Court to interpret certain parts of the Settlement Plan. The Court declines to give advisory opinions. The State of Missouri, the City of St. Louis, and the United States have advised the Court that they would not sign the Settlement Plan.

The proposed Settlement Plan is limited to the 12(c) phase of this litigation and does not include St. Charles and Jefferson Counties, against which plaintiffs' interdistrict claims have been stayed. *See, e.g.*, H(336)81, dated August 24, 1981; and H(1365)82, dated September 17, 1982. The special education programs of the Special School District will be dealt with hereafter. The proposed Settlement Plan also does not involve the paragraph 12(d) housing issues and the housing defendants against which plaintiffs' claims have been stayed.

III. **Fairness Hearing**

On April 8, 1983, this Court scheduled a fairness hearing to begin April 28, 1983, at which evidence concerning the Settlement Plan was to be presented. The Court's order also provided for publication of notice to plaintiff class members of the proposed agreement and fairness hearing. The notice was published twice in each of thirteen newspapers having circulation throughout the St. Louis metropolitan area, and was sent by registered mail to each person or group who submitted written

comments on the Agreement in Principle in compliance with the relevant Court order. The Court also required that a copy of the proposed Settlement Plan be made available to the public at each school within the St. Louis metropolitan area. In addition to the formal notice provided by this Court, the proposed Settlement Plan received extensive media coverage throughout the St. Louis metropolitan area (*see* Memorandum Decision filed April 28, 1983, with the Order of the same date, H(2343)83, and Exhibit 4 containing a collection of newspaper articles concerning the Settlement Plan). Judging from the public response as evidenced by both the participation at the fairness hearing and the submission of written comments, there was more than sufficient notice to and opportunity for interested citizens to be aware of the relevant issues and/or to convey their respective positions.

At the five-day fairness hearing, the Court heard from both proponents and opponents of the proposed Settlement Plan. The opposing evidence included eleven persons from the local community, some of whom presented statements on behalf of organizations. Furthermore, the Court received forty-two written statements regarding the proposed Settlement Plan from interested citizens and organizations. The Court granted parties until June 1, 1983, to file proposed findings of fact and conclusions of law and received four such pleadings.

APPENDIX B

We are all gravely concerned with the costs involved in coming into compliance with federal constitutional standards in the desegregation of schools. This concern should be placed in proper perspective.

In the book *Inside U.S.A.*, written in 1947, John Gunther wrote of the resourcefulness with which Missourians can address educational problems:

"Negroes call Missouri a 'southern state with northern exposure.' It was a slave state in 1860, and laws prohibiting intermarriage between black and white are on the books. Segregation is the rule in schools, theaters, restaurants, and hotels; on the other hand there is no Jim Crow in transportation. Conductors on southbound trains try, however, to persuade Negroes to sit in the same car, to save the trouble of moving them into a Jim Crow Coach when the South proper is reached.

"The most interesting over-all aspect of the Negro issue in Missouri is in education. The situation is moderately complex. The University of Missouri at Columbia refuses (like all southern state universities)[1] to admit Negroes. The University of Kansas at Lawrence, Kansas, does admit them. The University of Kansas City (Missouri) does not admit Negroes, nor does Washington [University] in St. Louis. St. Louis University (Catholic) does. At Jefferson City, some thirty miles from Columbia, is Lincoln, a state university exclusively for Negroes. In 1936 a Negro named Lloyd Gaines, on being graduated from Lincoln, applied for admittance to the University of Missouri law school. He was refused. He thereupon sued the university. The case reached the Supreme Court, which in 1939 made a[n] historic ruling, to the effect that the state of Missouri was obliged to give its citizens, white or Negro, equal educational facilities. But a loophole continued to exist, whereby the state could pay the tuition of a Negro at some institution *outside* the

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[1] "In Missouri for the first time in these pages we touch the South. This is emphatically a border as well as a middle western state. 'Missouri would lose something if the Civil War were ever entirely settled,' wrote the Kansas City *Star* not long ago. The Missouri boot heel digs directly into what is veritably the 'old' South, and one region is called 'Little Dixie.' Missouri came into the union as an offset to Maine. The War Between the States split it savagely asunder; it gave 118,000 troops to the Confederate army, 116,000 to the federal. In blunt fact the Bushwhackers and others in Missouri fought their own Civil War, within the state's own frontiers, and traces of this still show." (footnote omitted.)

state, instead of admitting him to one of its own white schools; this is the reason why so many Missouri Negroes go to the University of Kansas. But the Gaines case made further action necessary. Missouri was forced to set up a branch of its law school *for Gaines alone,* in St. Louis!—in order that the campus at Columbia should continue to remain lily white. This must be the only case in history of a school designed for a student body consisting of one person. Gaines, however, did not appear in St. Louis to take up his unique position.

"Then a lively young girl named Lucile Bluford, at present on the staff of the Kansas City *Call,* applied for admittance to the University of Missouri school of journalism, which is incidentally one of the best in the nation. The registrar did not recognize her application as being from a Negro, and she was accepted. Then, when the school term opened and she arrived on the campus, she was promptly informed that she could not, of course, be admitted. Miss Bluford renewed her application, was refused, and then sued the university. To evade implications of the suit, the state then set up a separate school of journalism at Lincoln—which still exists—again with the intent of keeping, at all costs, any Negroes from infecting the home campus. This segregated school of journalism had only five or six students to begin with; yet it had to be specially maintained with a staff of teachers and the like. Miss Bluford, however, would not attend the ersatz school. It was set up for undergraduates and she was qualified to be a graduate student. So she applied for admittance to the university's graduate school. Again she was refused. So she filed another suit. Fearing to lose the suit, in which case it would have had to accept her, the university proceeded to abolish (temporarily) its own graduate school of journalism.

"Lest this whole episode appear purely incredible, as well as asinine, we should point out again that Missouri is a border state. When we reach the South it will become clearer why such monstrous procedures continue to exist." John Gunther, *Inside U.S.A.*, ch. 22, pp. 354, 356-67 (1st ed. 1947).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

ORDER

(Filed Aug. 18, 1983)

This matter is before the Court on the motion for stay filed by the City of St. Louis, H(2591)83, dated August 15, 1983, regarding an order entered by this Court on July 5, 1983.

This is the third request for a stay directed to the Court's order approving the Settlement Plan. On July 26, 1983, the State defendants applied for a stay pending their appeal. H(2534)83. The next day the Court esablished a deadline of August 9, 1983, for responses to that application, and set the matter for oral argument at the next regularly scheduled motion day, on August 10, 1983. H(2541)83. In response, St. Louis County government defendants filed their motion for stay on August 8, 1983, H(2551)83. At the regularly scheduled motion day, at which counsel for the City of St. Louis was present, the Court heard oral argument on both requests for stay and responses thereto. The Court, upon request, also heard argument of counsel for parties who had not previously filed written statements addressing the stay issues.

Prior to August 15, 1983, the City of St. Louis filed no written statement regarding the requests for stay filed by State defendants and St. Louis County government defendants. Such a written statement might have joined in or opposed those requests, or could have sought a stay on behalf of the City of St. Louis itself. Although present in Court, counsel for the City of St. Louis stood mute as the Court heard oral argument on the pending requests for stay.

Now, with the scheduled start of school only two weeks away, six weeks after entry of the relevant Court order, and after two prior requests for stay (directed to that order) have been filed, argued, and decided, the City of St. Louis files a third request for a stay. In view of all the circumstances here presented, the Court reaffirms its adherence to the mandate of the United States Court of Appeals for the Eighth Circuit that the district court countenance no excuse for further delay. *Liddell* v. *Board of Education,* 667 F.2d 643, 651 n.6 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981).

As to the City's alternative request, it is not this Court's practice to render advisory opinions.

Having carefully considered this matter,

IT IS HEREBY ORDERED that the motion for stay of the City of St. Louis, H(2591)83, be and the same is denied.

Dated this 18th day of August, 1983.

William L. Hungate
United States District Judge

APPENDIX C
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LINDELL, et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

SETTLEMENT AGREEMENT

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Signatories to the Settlement Agreement

Appendix — Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Quality in Non-Integrated Schools.

I. Purpose and Definitions

A. Purpose

This detailed implementation plan is submitted by the signatories as an agreement to settle the litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims [H(348)81, as amended; H(351)81, as amended; and H(1027)82, as amended] and to implement the Agreement in Principle H(2141)83 as required by the Court's Orders H(2142)83, H(2214)83. The establishment of programs and the funding of this settlement agreement is under the authority of paragraph 12(a) of the May 21, 1980 Order as amended as well as the orders and decisions relating thereto and the provisions contained in this agreement. The Agreement in Principle provides:

AGREEMENT IN PRINCIPLE

FIVE BASIC ELEMENTS OF A FINAL SETTLEMENT

In reviewing the five basic elements of the proposed final settlement, two preliminary points bear special mention. First, the five basic elements are at best statements of broad principles, and many significant subsidiary issues and details still must be resolved even if the parties reach an agreement on the major princples. Second, there are four critical propositions that have not yet been incorporated in five elements and that would be incorporated explicitly in a final settlement: (1) no court-ordered mandatory, interdistrict transfers of white or black students until after a hearing on liability, (2) the 23 suburban school districts in St. Louis County will continue to exist, and (3) the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be ordered by the Court, (4) black students in suburban school districts that have a minority enrollment of 50% or greater would enjoy the transfer rights.

1. **The suburban school districts in St. Louis County would agree to accept black transfer students up to their Plan Ratio within 5 years.**

a. Under the Plan Ratio, which is employed in the 12(a) voluntary plan, a suburban school district would accept up to as many black transfer students was would constitute 15 percent of the total student population in that district, but no suburban school district would be required to accept more black transfer students than would raise the overall percentages of blacks in the total student population higher than 25 percent. The effect of the Plan Ratio may be illustrated by considering several hypothetical suburban school districts with different existing racial ratios. If Suburban School District X has a student population that is 3% black, it would accept up to as many black transfer students as would constitute 15% of the total student population in District X and the percentage of black students in District X would then be 18%. If Suburban School District Y has a student population that is 10% black, it would accept up to as many black transfer students as would constitute 15% of the total student pouplation in District Y, and the percentage of black students in District Y would then be 25%. If Suburban School District Z has a student population that is 15% black, it would accept up to as many black students as would constitute 10% of the total student population in District Z and the percentage of black students in District Z would be 25%. If a Suburban School District has a student pouplation that is already 25% or more black, it would not be required to accept any black transfer students.

b. All student transfers under this element shall be voluntary.

c. This first element of the settlement would provide an oportunity for a substantial number of black students in the city to attend school in the county. On the basis of Fall 1980 data, application of the Plan Ratio to all twenty-three suburban school districts would provide an opportunity for approximately 17,500 black students to transfer to county schools. This estimate is probably too high because there has been a decline in total student enrollment and an increase in black enrollment after 1980, and 15,000 is a reasonable working figure.

d. One significant distinction between this first element of the settlement proposal and the 12(a) plan should be noted. Under the 12(a) plan, a suburban school district can refuse to accept black transfer students if it does not have "space available" even if it has not yet reached the Plan Ratio. There is no "space available" condition on interdistrict transfers under the proposed stettlement.

e. Each school district will adopt academic and disciplinary standards to assure equitable treatment of all students.

2. **Establishment of Magnet Schools.**

a. New magnet schools in addition to the magnet schools established under the intradistrict order and under the 12(a) plan would be created.

(b) In addition to providing special education programs for city students, the purpose of the magnet schools is to attract white transfer students from the county. If white students transfer to city magnet schools, there will be an opportunity to provide desegragated education for a larger number of black children (approximately 15,000 black students would remain in all one-race schools even if 15,000 black students

transferred to county schools), and there would be greater equity in the assignment of the burdens of transportation.

c. Unduplicated magnet programs to attract white county students and black students will be established at agreed locations in either the city or the county. No such magnet program would be established in a school district over its objection. City and county school districts would maintain autonomy over their other curriculum offerings. The final settlement agreement will describe with specificity magnet programs and their locations.

3. **Improvement of the quality of education provided by the city school system and special provisions to improve the quality of education for students in one-race schools.**

a. The settlement will contain specific provisions for improving the quality of education provided by the city school system and for restoring its AAA rating. No exhaustive list of specific provisions has been drafted yet, but reduction of the pupil/teacher ratio to the state's standard for an AAA rating or to county average, whichever is lower and an early childhood (birth to age 4) education program suggested in the past by the State are examples of the type of provisions under consideration.

b. Since there are now approximately 30,000 black children in one-race schools in the city, some of these students will remain in all one-race schools on the north side of St. Louis even if 15,000 black students transfer to county schools and other students attend integrated magnet schools. The settlement plan will include special provisions to improve the quality of instruction received by black students who attend one-race schools.

c. Several recent reports and documents provide a basis for assessing the needs of the city school system. *See* Desegregation Monitoring and Advisory Committee, The Effects of the City Board's Budget and Staff Reductions on the Implementation of the Desegregation Plan, January 24, 1983 [H(1982)83]; City Board's Motion to Order Adjustments in the State Funding of the Desegregation Plan [H(1979)83]. The State's report on the AAA rating of the city school system will also provice [sic] information about needs. These reports and documents coupled with the efforts of the plaintiffs will provide a basis for drafting specific provisions to improve educational quality.

4. Provisions to ensure that the proposed settlement will be carried out fully and fairly and that it will have a substantial impact.

a. It will include (1) provisions requiring the suburban school districts to recruit black transfer students from the city and to promote voluntary transfers of white county students to city schools and (2) provisions requiring the plaintiffs to promote interdistrict transfers and, (3) non-enforceable annual targets by each school district for achieving the Plan Ratio.

b. It will also include fiscal incentives designed to encourage interdistrict transfers.

c. All districts will adopt procedures to ensure equitable treatment of all students.

d. **FACULTY**

1. Goal: Each school district shall establish goals whereby the percentage of blacks employed as (1) teachers and (2) administrators shall equal a percentage based on the actual ratio of black and white personnel in each of such categories

presently employed or on leave of absence in the city and suburban school districts or the ratio of such black and white personnel as established by a labor market study.

2. The goal would be accomplished through the development of an enforceable affirmative plan which shall include provisions for recruitment of black personnel and yearly hiring ratios. (1:1, 1:2, 1:3, etc.). Departures from such ratio may be justified, among other grounds, if a district demonstrates that it has hired the best qualified candidate for any position.

3. Means: (A) Normal hiring — subject to state law.

(B) Incentives for voluntary teacher transfers.

(C) If necessary, allocation by the Court of fiscal incentive funds (that would not be available to suburban school districts but for the settlement plan) to the hiring of minority teachers.

4. Obligations under this provision shall terminate at such time as either the hiring or pupil goals have been achieved.

e. The City Board would be invited to join the Cooperating School Districts for the St. Louis Suburban Area, Inc.

f. An annual report will be filed with the Court concerning the steps taken to implement the settlement.

g. The final settlement plan shall recognize

(i) That the State will, within the limits of its authority, encourage the construction of hous-

ing which shall advance the integration of neighborhoods, and

(ii) that the parties with housing responsibilities shall not take any action to interfere with the implementation of this settlement plan.

*** As to the housing issue, there is no agreement between the State, the County, and the City Board, the Caldwell and Liddell Plaintiffs.

[Statement made by Special Master in Court]

h. Voluntary transfer students under this settlement plan shall not be assigned by the receiving district in a manner that contributes to racial segregation within the district.

i. An agreement in principle to identify options for students in majority black schools within school districts that are not predominately black to enjoy transfer rights within the district comparable to those that exist in the predominantly black county districts.

5. **STAY**

1. Litigation will be stayed for five (5) years to permit full implementation of voluntary transfers, magnet schools, quality education, whatever teacher provisions — in essence, a stay while implementing elements 1, 2, 3 and 4. The stay will not preclude judicial enforcement of the terms of the settlement agreement.

2. Goal: The goal is a minority enrollment of 25% for districts that currently have less than a 25% minority enrollment.

3. **If a district reaches the PR within five years,** it gets a final judgment declaring that it has satisfied its pupil desegregation obligations. The plaintiffs agree to seek no

further pupil desegregation relief through litigation. The school district's only continuing obligation is to comply with the specific obligations stated in elements 1, 2, 3 and 4, and to make continued efforts to reach the goal stated in paragraph 2. The Court would relinquish active supervision two years after the five-year period.

4. **If a school district does not reach the PR**, then

(a) Monitor will begin to prepare reports and recommendations, based on hearings at which all interested parties shall have the opportunity to be heard, in September of the fifth year so that the reports, the recommendations, and the negotiation process can be completed by the end of the fifth year.

(b) Parties will negotiate;

(c) Only after (a) and (b) can plaintiffs renew the litigatfon, in which case

(i) they must prove liability, and

(ii) they agree not to seek school district consolidation or reorganization and they agree not to seek a remedy beyond the 25% goal of paragraph 2, and any remedy would distribute the burdens of desegregation equitably, between the minority and the non-minority students in the school districts in the litigation under this paragraph.

(iii) In devising any remedy the Court would consider the monitor's report and it would be entitled to weight.

The Court's approval of any agreement shall determine that the Liddell, Caldwell, and the City Board Plaintiffs are entitled to "reasonable" attorney's fees and costs of litigation to be paid exclusively by the State after full hearing on attorney's fees.

B. Definitions

For purposes of this settlement agreement, the following terms are defined below:

"Enrolled' refers to those students that are enrolled in the participating districts' public schools.

"Home District" means the participating district which is the district of residence of the student transferring to another district pursuant to this plan or the district of employment of a teacher or administrator who transfers to another district pursuant to this agreement.

"Host District" is the participating district which receives a student, teacher or administrator who transfers from another district pursuant to this agreement.

"Participating District" means those school districts that are signatories to the agreement.

"Students" means kindergarten, full time elementary and full time secondary students in public schools in the City of St. Louis and St. Louis County, unless the term is specifically designated to refer to non-public school students. For the purpose of permitting voluntary interdistrict transfers by county pre-school children to the city and for the purpose of education of city pre-school children pursuant to Parts III and IV, the term "students" also includes pre-school students.

II. Voluntary Interdistrict Transfers

A. Plan Goal and Plan Ratio

1. **Definitions**
   a. The "Plan Goal" is a racial ratio fo 25% black students and 75% white students.

   b. The "Plan Ratio" is an increase of black student enrollment of fifteen percentage points or achievement of the Plan Goal, whichever is less.

2. **Plan Ratio and Plan Goal for Each Participating District.**

a. The calculation of the plan ratio and the plan goal for each participating district is based on total resident enrollment and black resident enrollment) as of September 30, 1982 (State Report Date). Total resident enrollment for each participating district includes tuition students, and white resident enrollment includes non-black minority students. Transfer students under the 12(a) plan are not included in the resident enrollment data. Transfer students under the 12(a) plan are counted separately as part of a participating district's efforts to achieve its plan ratio and plan goal under this settlement agreement. The plan ratio and the plan goal of each participating district stated in subsections b. - c. are based on the percentage of black resident students enrolled in that participating district on September 30, 1982. The plan ratio will be used to calculate, on the basis of then current enrollment data and as set forth in section 4, the number of interdistrict transfer students that each participating district must accept.

b. The plan ratio and the plan goal of each participating district in which the black resident student enrollment was less than twenty-five percent on September 30, 1982 are:

Participating Districts	Plan Ratio	Plan Goal
Affton	15.15% Black	25.00% Black
Bayless	15.15%	25.00%
Brentwood	25.00%	25.00%
Clayton	16.27%	25.00%
Hancock Place	15.34%	25.00%
Hazelwood	25.00%	25.00%
Kirkwood	25.00%	25.00%

Ladue	25.00%	25.00%
Lindbergh	15.79%	25.00%
Mehlville	15.32%	25.00%
Parkway	16.98%	25.00%
Pattonville	18.72%	25.00%
Ritenour	25.00%	25.00%
Rockwood	15.95%	25.00%
Valley Park	15.48%	25.00%
Webster Groves	25.00%	25.00%

c. The plan ratio does not apply to participating districts in which the black resident student enrollment exceeded twenty-five percent on September 30, 1982.

i. Participating districts (with their percentage black enrollment as of September 30, 1982) in which the black resident student enrollment exceeds fifty percent are: Jennings (55.10% black), Normandy (86.92% black), St. Louis City (79.47% black), University City (77.15% black), and Wellston (99.45% black). At the time this settlement agreement is approved by the Court, these participating districts, other than the City of St. Louis, are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligations under VI A-H. The continuing obligations of these participating districts, other than the City of St. Louis, shall be limited to the establishment of such magnet programs designed to increase white student enrollment and to cooperation in the recruitment process to facilitate the transfer of black students enrolled in their district to participating districts whose enrollment is less than twenty-five percent black, consistent with the provisions of Parts II and III.

ii. Participating districts in which the black resident student enrollment exceeds twenty-five percent but is less than fifty percent are: Ferguson-Florissant (40.55% black), Maplewood-Richmond Heights (28.97% black) and Riverview Gardens (42.60% black). At the time this settlement agreement is approved by the Court, these participating districts are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligations under Section VI A-H. The continuing obligation of these participating districts shall be limited to cooperation in the recruitment process, consistent with the provisions of Part II, to facilitate the transfer of white students enrolled in their district to participating districts whose enrollment is greater than fifty percent black and to facilitate the transfer of black students in their district pursuant to Section XIF hereof. If the black enrollment in any one of these three districts should exceed fifty percent, then its black students would enjoy transfer rights under Section II, and the participating district would be subject only to the two obligations assumed under subsection c(i) by participating districts in excess of fifty percent black enrollment as of September 30, 1982.

3. Implementation of the Plan Ratio and the Plan Goal by Participating Districts and Determination of Annual Targets.

a. Unless its plan ratio is achieved earlier, each participating district identified in section 2b, at the time it prepares enrollment estimates for the next school year but not later than a time to be specified by the Recruitment and Counseling Center, shall:

i. estimate the total resident enrollment to be reported on the State Report Date, white resident enrollment (number and percentage) and the number of voluntary transfer students who will continue as students in the participating district.

The total resident enrollment figure shall include tuition students. The resident white enrollment figure shall include all non-black minority students, but it shall not include voluntary transfer students. The term "voluntary transfer students" includes all students who transferred to another district under the 12(a) plan or who transfer to a participating district under this settlement agreement. Such white voluntary transfer students shall be included in the enrollment figures of the participating district in which they actually attend school. The resident black enrollment figure shall not include black voluntary transfer students;

ii. estimate the number of black voluntary transfer students necessary to achieve its plan ratio established by section 2b. according to this formula:

$$\frac{X+Y}{X+Y+Z} = \text{Plan Ratio}$$

In this formula, X represents the number of black voluntary transfer students necessary to achieve the participating district's plan ratio, Y represents the number of black resident students as determined under subsection a(i), and Z represents the number of white resident students as determined in subsection a(i). After the number (X) of voluntary black transfer students necessary to achieve the plan ratio is determined,

this number is then reduced by the number of black voluntary transfer students who have previously transferred into the participating district and who will remain enrolled in the participating district in the next school year; and

iii. establish annual targets for achieving the plan ratio in each of the remaining years. For each year prior to the fifth year of this settlement agreement, each participating district shall determine its own annual targets based on its plan ratio, and each participating district may state preferences for particular numbers of students at particular grade levels that the Recruitment and Counseling Center may consider, in addition to the prior achievement of the plan goal by any pareticipating district, in assigning voluntary transfer students to participating districts in a manner consistent with the voluntary transfer student's rights to choose particular participating districts and schools. Each year each participating district shall report its annual targets and preferences to the Recruitment and Counseling Center. These annual targets for achieving the plan ratio are non-enforceable.

b. Each school year each participating district identified in section 2b, unless it has a plan ratio lower than its plan goal and has not yet achieved its plan ratio, shall calculate separately the number of black voluntary transfer students necessary to achieve its plan goal for non-enforceable annual targets for achieving its plan goal. This calculation shall be done consistently with the methods established in subsection a, except that the plan goal shall be substituted for the plan ratio in the formula set out in subsection a(ii).

c. Each school year each participating district identified in subsection c(i) of section 2 shall calculate the number of white voluntary transfer students necessary to achieve its plan goal and non-enforceable annual targets for achieving its plan goal.

4. **Determination of Achievement of a Participating District's Plan Ratio**

a. At the end of each school year during the first five years of this settlement agreement, each participating district identified in section 2b. shall determine on the basis of enrollment data as of the last day of school prior to graduation the percentage of black student enrollment according to the following formula:

$$\frac{A+Y}{A+Y+Z} = \text{Percentage Black Student Enrollment}$$

In this formula, A represents the actual number of black voluntary transfer students attending a school in the participating district, Y represents the actual number of black resident students deterined consistently with section 3a(i), and Z represents the actual number of white resident students determined consistently with section 3a(i).

b. The actual percentage of black student enrollment as calculated under subsection a shall be employed under Section XII in determining whether a participating district has equalled or exceeded its plan ratio established in section 2b.

B. **Eligibility and Priorities Regarding Interdistrict Transfers Other Than To Magnet Schools and Programs**

1 .**Purpose**

The purpose of this provision is to assure opportunities for interdistrict transfer for black students in the City of

St. Louis who have obtained an intradistrict judgme against the City Board and the State relating to the City St. Louis and for black students in predominantly bla school districts who have had asserted on their behalf claim for interdistrict relief in the pending litigation.

Eligibility

a. Black students who are members of the racial majo ity at a school in any participating district whi district is 50 percent or more black in its enrollme shall be eligible to transfer voluntarily to a school a district in any other participating district in whi school and district they would be in the racial mino ity on the conditions set out in Section II.B.3. T provisions of Section II shall govern the operation these voluntary interdistrict transfers.

b. White students who are members of the racial majo ity at a school in a participating district which distri is more than 50% white in its enrollment shall be eli ible to transfer voluntarily to a school and district which they would be be in the racial minority.

c. Students who have demonstrated disruptive behavi in their home district will be prohibited from volu tary interdistrict transfer. Prior to the transfer of a student the home district shall issue a statement th the transferring student is in good standing and h no record of recent disruptive behavior which wou interfere with the operation of the program.

d. Students who apply for interdistrict transfer who a currently withdrawn from school will be evaluated b the Recruitment and Counseling Center and pe mitted to transfer if there is no evidence of disrupti behavior. If there is evidence of prior disrupti behavior, these students may be permitted to transf

on a provisional basis as a probationary transfer student at the discretion of the Recruitment and Counseling Center, subject to no further disruptive behavior.

e. Handicapped students who are served by the Special School District and the City Board who are not Phase I students shall be provided for pursuant to the agreement between the Special School District and the plaintiffs.

f. Transfers are not limited to students in public schools.

3 .**Priorities**

If in any school year, the number of eligible black students applying for interdistrict transfers exceeds the total number of spaces remaining under this settlement agreement, spaces shall be allocated among districts under the following formula:

A calculation shall be made for each majority black district of the number of black students currently attending schools at are 50% or more black in their enrollment. Ratios shall then be established for each district based upon the number of black students attending 50% or more black schools as a proportion of the total number of such students in all majority black participating districts. Spaces shall then be allocated according to the ratio. If the number of applications from any district is fewer than those it would be entitled to under the ratio, the excess spaces shall be redistributed to the remaining districts according to the same ratio.

4. The eligibility and priority provisions contained herein do not apply to magnet schools and programs. Separate eligibility and priority standards for magnet schools and programs are set out in Section III.

C. **Placement of Voluntary Interdistrict Transfer Students**

1 .**Application for Transfers**

a. Each year during a period specified by the Recruitment and Counseling Center, every public school student in St. Louis City and St. Louis County who is eligible to transfer to another district will be asked to indicate if he/she wishes to trasnfer to another district. Eligible white city and county public school students will be provided with information about magnet school offerings in the city and county. Eligible black city and county public school students will be given information about regular schools in predominantly white county districts and all magnet schools.

2 .**Student Choice**

a. If the student wishes to transfer he/she will complete a transfer application and return it to the Recruitment and Counseling Center by a specified date. These applications will be time-stamped and processed by the Recruitment and Counseling Center according to the provisions of this agreement.

b. If a student indicates that he/she wishes an interdistrict transfer to a regular school, the student may:

i. Request that the Recruitment and Counseling Center select the district and school to which the student will be assigned.

ii. Specify up to three choices of school districts and two school choices within each district.

3 .**Actual Assignment to District, School and Grade**

a. Every effort will be made to honor each student's first choice of district and/or school. If a sutdent has in-

dicated no choices, other than the wish to transfer, the Recruitment and Counseling Center will assign students first into those districts with the larger discrepancies between current enrollments and the plan goal.

b. Assignments first will be made according to the spaces in schools and grade levels identified by the host district to achieve its annual target. These will be matched against all choices indicated by the student.

c. If students remain unassigned after the above step, the host district for the student's first choice will be required to take the student as long as the placement will not exceed for that particular grade level 15% of the host district's annual target or exceed the annual target of the host district.

d. If the student cannot be accommodated in the first choice district, the same procedure applied to the first choice district in preceding paragraph c shall be applied to the second choice district if one has been indicated. If the student cannot be accommodated in the second choice district the same procedure will be applied to the third choice district, if one has been indicated.

e. If the student cannot be assigned under these conditions, or if the student does not accept the assignment provided, the student may request that he/she be placed on the waiting list for one particular district. Students on the waiting list will be processed on a first come/first served basis in accordance with the overall placement criteria.

D. Equitable Placement

1. The student's opportunities for success will be the major goal when determining student placement.

2. Voluntary transfer students shall not be assigned by the host district in any manner that contributes to racial segregation.

3. In assigning students to schools, black voluntary transfer students (except those assigned to magnets) shall not be assigned to a school in which the black enrollment exceeds by more than 15 percent the plan goal for the district as a whole.

4. The host district shall honor the grade placement for the student as certified by the home district, which shall be communicated to the parent prior to transfer. Any preliminary evaluation of the student which might suggest modification of the student's placement also will be provided to the host district prior to transfer. If, during the first semsester, testing, performance, remedial efforts, and consultation with all parties in interest indicate that an adjustment of grade placement should be made, it shall be made after the first semester in consultation with the student's parents, and preferrably with parental consent.

5. School districts shall use tests that meet prevailing professional standards and such tests shall be used in accordance with the publisher's instructions.

E. Tenure

1. The commitment to accept a student shall be for the duration of the student's voluntary participation of the plan. Once a student exercises his or her right to participate in the plan, the student will continue in said plan, subject to the provisions of subsection 3, until the student affirmatively withdraws from participation as herein set out. Students will not have to transfer each year or exercise a transfer choice to remain in the host district. Students participating in this

plan shall be encouraged to continue to participate at their initial school of choice. It is expected that the student will follow the pattern of assigned schools for the resident students in the school in which the transfer student first enrolls.

2. Subject to the provisions of subsection 3, students who have elected to transfer under this plan shall remain students of the host district until they choose to return to the district where they reside.

3. Host districts shall not have the authority to remand transfer students to the home district. Host districts shall have the authority to suspend or expel a transfer student using the same due process procedures applicable to resident students.

F. Standards

1. Once admitted, transfer students will be expected to meet the same general standards, academic and other, as applied to students of the host district.

2. Information about each district's academic and disciplinary policies and procedures will be provided to the Recruitment and Counseling Center and made available to prospective transfer students on request. This should include information on pupil-teacher ratios, promotion and retention, counseling assistance, grading, student code of conduct, disciplinary action, and suspension and expulsion.

3. The host district shall respond to the educational needs of students without regard to their status as a transfer or resident student. Transfer students shall be eligible and encouraged to participate in all school programs funded and sponsored by the host district (academic, athletic, extra-curricular and other) and shall not suffer any disability or ineligibility because

they are voluntary interdistrict transfer students. Participation in after-school activities will be facilitated by the provision where needed of extra-curricular buses or other forms of transportation. This provision is not intended to require transportation to or from an evening event that occurs subsequent to and separate from the regular school day.

4. In cases involving suspension greater than ten days in length or expulsions, the Recruitment and Counseling Center shall assist students and their parents in understanding their due process rights.

5. Participating districts shall apply disciplinary standards and procedures in a nondiscriminatory manner and in accordance with the Missouri state laws on suspension and expulsion, Sections 167.161 and 167.171.

III. Magnet Schools

A. Purposes of Magnets

1. Preamble — Unduplicated magnet programs to attract white county students and black students will be established at agreed locations in either the city or the county. No such magnet program would be established in a school district over its objection. City and county school districts would maintain autonomy over their other curriculum offerings.

2. The purposes of including magnet schools and programs are the following:

a. To increase the desegregation of the schools in the Metropolitan area of St. Louis.

b. To provide broader educational opportunities to students in the metropolitan area.

3. Among the assumptions guiding this proposal are the following:

a. A magnet school may be a whole staff, curriculum and facility or a part of a school, as with a magnet program. Magnet schools and programs may also be part time and may serve student populations part time at hours other than the regular school day.

b. Magnets will host students on a city and county-wide basis. Insofar as is supportive of the desegregation effort, students will have an opportunity to attend magnets.

c. No more than 20,000 students may be served by magnets, divided as follows:

i No more than 15,000 from grades 6-12

ii No more than 5,000 from pre-school to grade 5

iii Of the 20,000 students which may be served by magnets, a minimum of 12,000 shall be served by City magnets, and no more than 8,000 shall be served by county magnets.

d. The composition of student enrollment in each magnet school or program shall be 50% black and 50% white, with an allowable variance of not more than plus or minus 10%.

e. Program themes of the magnet list schools established hereunder shall be as diverse as educational planning and imagination allows, but participation of successful study at a magnet school at any level shall not prevent a student from subsequent study in different, regular fields of instruction. Thus, every magnet school shall provide basic and general academic preparation within its own site or in conjunction with nearby schools.

B. Themes

The following magnet schools and programs are authorized but not mandated for 1983-84 and 1984-85. Such list may be rearranged or reduced, but may not be expanded without review and approval by the magnet review committee:

1983-84

CITY	Grade	Target Enroll.
Action Learning and Career Education	K-8	450
Foreign Language Experience School	K-8	275
Classical Junior Academy	2-8	549
Montessori I	Preschool-3	350
Expressive/Receptive Arts	K-8	450
Visual and Performing Arts Middle	6-8	315
Academic and Athletic	6-8	175
Visual and Performing Arts High School	9-12	550
Naval Jr. ROTC	9-12	400
Visual and Performing Arts Center	K-5	485
Individually Guided Ed. I	K-8	415
Individually Guided Ed. II	K-8	450
Health Careers	11-12	300
Math Science and Technology	9-12	475
Academy of Basic Instruction I	K-8	310
Academy of Basic Instruction II	K-8	345
Academy of Basic Instruction III	K-8	410
Investigative Learning Center	K-5	415
Investigative Learning Center Middle	6-8	315
Management Academy	11-12	300
Metro High School	9-12	200
Foreign Language (Roosevelt)	9-12	450
Mass Media (McKinley)	9-12	200
Classical Academy (Soldan)	9-12	150

COUNTY

Print and Broadcast Journalism (Kirkwood)	6-12	100
Extended Opportunity School (Clayton) (night)	9-12	200
Global Studies (Valley Park)	7-12	50
Language Arts Enrichment (Valley Park)	5-6	25
Instructional Media Laboratory School (Webster G.)	9-12	150
Television Production (Webster G.)	9-12	75
Early Childhood Microcomputer Immersion (Webster G.)	K-4	100-110
Microcomputer (Pattonville)	6-8	45-65
School Leadership (University City)	9-11	90
6th Grade Camp (part time) (University City)	6	880
Instrumental Music (summer) (Normandy)	9-12	200
BEST Basic (summer) (Normandy)	7-8	150
Vocational Assessment (after school/ summer) (Normandy)	9-11	100
Computer Math-Language-Vocabulary (Ritenour) (Saturday)	4-6	70

1984 SUMMER

Summer Program for Voluntary Transfers (Parkway)	1-10	400-600
Math and Science (summer) (Normandy)	6-8	100

1984-85 (In addition to 1983-84 List)

CITY

Foreign Language Experience School II	K-8	275
Montessori II	Preschool-3 (replicate)	400
Visual and Performing Arts Middle	6-8 (replicate)	315
Individually Guided Education I	Convert to K-5	415
Individually Guided Education II	Convert to K-5	450
Individually Guided Education	6-8 (New location)	500
Visual and Performing Arts High School (relocate to larger facility)	9-12	1,000
Naval Jr. ROTC (Relocate to larger facility)	9-12	1,000
Military Academy Middle (New Magnet School)	6-8	400

COUNTY

Aerospace Education (Lindbergh)	9-12	400-500
Mobile TV Production & Demo Lab (Wellston)	9-12	12-15
Business and Office Practice (Wellston)	9-12	25
Peer Counseling Institute for Students (Wellston)	?	25
Metals and Foundry (Hancock Place)	9-12	45
Early Childhood Training (Maplewood-Richmond Hgts.)	3-4 yr. olds	100
International Baccalaureate Program (University City)	11-12	100
Aerospace (Normandy)	7-8	200

C. Planning

1. New magnets or expansion of magnets already existing may be provided for the school years 1984-85, 1985-86, 1986-87 and 1987-88 under the provisions of this plan by a process as described in the following paragraphs.

2. The process for approval of new magnets or expansion of existing magnets requires that applications be filed with a magnet review committee which shall have final authority over approval or disapproval of such magnets. The magnet review committee (hereinafter sometimes referred to in Section VI as the "magnet review committee") will report its decision as to whether or not applications are to be approved to the applying district and the Voluntary Interdistrict Coordinating Council.

3. Applications for 1984-85 magnets may be filed with the committee immediately upon the approval of this agreement by the Court and until December 15, 1983. On or before February 1, 1984, the committee shall render its decision on 1984-85 magnets. Each year thereafter, applications shall be filed with the committee no later than December 15, for programs beginning in the succeeding fall and the committee's decision shall be rendered on or before February 1.

4. There shall be six persons serving on the magnet review committee. Two persons representng the City Board, two persons representing the N.A.A.C.P., the Caldwell Plaintiffs, and the Liddell Plaintiffs, and one person representing the State, shall constitute the review committee. The committee shall choose its chairman annually and shall make such reports to the Voluntary Interdistrict Coordinating Council as may be required.

5. The magnet review committee shall use at least these criteria in judging the applications for new magnets or expansion of existing magnets:

a. The extent to which the magnet will promote the desegregation effort.

b. The educational need of the students and the balance of educational opportunities.

c. The extent to which the magnet assists the host school district in meeting its desegregation effort under this plan.

d. The non-duplicated nature of undersubscribed magnet schools or programs.

e. The cost effectiveness of the programs related to the number of students served.

6. A district may seek approval for a planning grant for the purpose of devising a magnet school or program. The committee, in cooperation with the State Department of Education, has the sole authority to approve such grant and set the amount which shall mean that the district shall not face competition from similar planning or development effort during the period shown on the grant.

D. Evaluation

1. The magnet review committee shall biannually review the quality of magnets and report to the host school and the Voluntary Interdistrict Coordinating Council as to the improvements that are recommended in magnets and/or whether or not a magnet should be terminated. Such reports shall be included with the annually published common orientation booklet.

2. In preparation of the biannual review, the host school shall submit to the magnet review committee information on at least these criteria:

a. The extent to which the magnet has promoted and will promote the desegregation effort.

b. The quality of the magnet as measured by student outcomes.

c. The educational need of the students and the balance of educational opportunities.

d. The extent to which the magnet assists the host school district in meeting its desegregation effort under this plan.

e. The non-duplicated nature of undersubscribed magnet schools or programs.

f. The cost effectiveness of the program related to the number of students served.

E. Planning and Evaluation of Staff

1. The magnet review committee shall be a standing committee of the Voluntary Interdistrict Cordinating Council and shall initially have the assistance of the following staff: one senior educational planner, one senior educational evaluator and no fewer than three support staff.

2. The staff shall report directly to the Executive Director of the Voluntary Interdistrict Coordinating Council and shall function to assist the review committee in its planning and review of applications and its evaluation of magnets. In addition, the staff shall coordinate with the personnel responsible for student assignment.

F. Administration

Each magnet school or program shall be under the control of the host district board of education as to theme, level, continued existence, administration, staffing, and location.

G. Protection of Local Programs

Magnet school themes and curriculum shall not be construed to prevent or inhibit the continuation of, or changes in, programs or curricula in non-magnet schools or programs.

H. Public Information

Magnet list schools shall be publicized annually in a **common** orientation booklet and through city-wide and county-wide visitation and presentations to interested parents and students.

I. Common Application

A common, uniform application form shall be devised by the Recruiting and Counseling Center(s) and distributed as part of the magnet orientation booklet. No one shall be admitted to a magnet school who has not completed this application.

J. Student Eligibility for Magnets

1. All students whose race is in the majority in their assigned school and district, except as provided in paragraph (d) hereof, shall be eligible for acceptance into a magnet school in a district in which their race is in the minority if: (a) their home district signs a statement attesting to no record of recent disruptive behavior; (b) if any identified special needs are diagnosed as no more severe than Phase I; (c) they meet such qualification requirements as may have been approved by the Magnet Review Committee as specifically appropriate to some magnet themes; (d) in addition to the above, (i) white students in the City of St. Louis are eligible to attend City magnets if they are enrolled in a school in which the white enrollment is either 0-10% or over 50% and (ii) black students in majority black districts are eligible to attend magnets hosted in other majority black districts if all host district black students who have applied have been accepted and slots for black students remain in said school.

2. Students residing in the city or county who are enrolled in non-public schools shall be eligible if they meet the above conditions and if space in a magnet remains available after all public school applications have been processed for a given term.

K. Priority of Acceptance

The present enrollment of existing magnets will be given first preference. If in any school year the number of eligible black students applying for magnets hosted by a majority white district exceeds the total number of spaces remaining, the spaces shall be allocated among the majority black districts under the formula set forth in Section II.B.3.

L. Reserved Seats

Up to 30% of the seats in any magnet shall be reserved initially for eligible applicants residing and enrolled in the public schools of the host district. This proportion shall not be deemed a restriction on the host district enrollments and the reserve seats may be allocated to out-of-district applicants if fewer than 30% apply.

M. Continuation of Educational Program

A student who completes one term in a magnet school in good standing within the code of conduct shall be continued in the school until graduation or until parents or guardian applies for transfer whether or not such magnet continues to be a part of this agreement.

N. Assignment and Tenure

1. If a student indicates that he/she wishes to transfer to a magnet school, the student may indicate up to three school choices.

2. Each district shall, by a date specified by the Recruitment and Counseling Center, report to the Recruitment and Counseling Center the target enrollment and available slots by grade level and race for any magnet schools operated by the district.

3. Magnet applicants will be assigned based on processing each student's choices with the slots available in the magnets.

Students who remain unassigned will be placed on the magnet waiting list and processed on a first come first serve basis.

4. Students who are enrolled in magnet schools shall be eligible to apply for a transfer to other magnet schools.

5. Kindergarten pupils in magnet schools will not automatically be promoted to the first grade in that magnet school, except where the magnet program specifically permits.

6. Students who graduate from a magnet school shall be eligible to transfer to a similar magnet school at the next grade level with first priority and without the necessity to reapply.

7. Students who graduate from a magnet school shall be eligible to transfer to any other magnet school at the next grade level with first priority, but must reapply.

8. Students in a magnet school which is divided into several schools or expanded in grade levels shall have first priority to transfer and without the necessity to reapply.

IV. Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools

Introduction

The parties recognize the importance of the concept of the improvement of the quality of education in schools in the City of St. Louis and their responsibility to submit specific provisions concerning same to the Court. The City Board has developed a program of the kind and scope to satisfy Section III of the Agreement in Principle and it is attached hereto as an Appendix. However, the St. Louis County School districts do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design. The parties agree that the Appendix forms a basis for setting

forth a detailed implementation program to improve the quality of education in the St. Louis Public Schools. More detailed information, including budgetary matters, will be reviewed as the implementation schedule is developed and the hearing on funding provisions is held. A summary of the Appendix follows:

1. **Strengthen the Long-Range Planning Capabilities of the District**

Proactive planning is essential to the future of the St. Louis Public Schools - a school system which is experiencing declining enrollments, declining revenues and aging facilities. The school system operates within the context of a Court ordered intracity desegregation plan and is preparing to participate in a metropolitan-wide voluntary settlement plan which extends the promise of an end to Court supervision within seven years. In this complex array of circumstances, the ability of the school system to provide quality educational experiences for the children and youth of the community rests in large measure on its ability to predict future events and circumstances and to plan accordingly. The planning must be logical, systematic and comprehensive to ensure that scarce human and material resources are targeted effectively and efficiently toward the achievement of the school system's objectives. This will require the development of a strong and dynamic planning component and the service units to support it.

The Long-Range Planning Unit will serve a central management support function and will be structured and equipped to facilitate the design of the future of the school system. The unit will address the need for consistent and focused direction for development and implementation activities within the school system and for the coordination of objectives and activities among support units in schools. It will address the need to organize for the efficient and effective use of human and material resources. The unit will

also fulfill the need to expand and utilize the findings of research and evaluation in developing projects and programs. It will facilitate planning which extends from goal-setting, needs assessment and problem analysis to the formulation of objectives and the design of strategies to achieve them. The unit will facilitate a systematic, logical approach to decision-making which draws heavily upon the analysis of data and information including demographic trends, availability of resources and evaluative feedback.

One of the major tasks of this unit will be the planning necessary to ensure the coordination of objectives and activities related to the implementation of the effective schools concept in all public schools in the City of St. Louis.

2. **Reduction of Pupil-Teacher Ratios, Staff Selection and Performance Assessement**

The pupil to classroom teacher ratios in integrated regular schools and in magnet schools will be lowered over the next five years to 25:1. The pupil-teacher ratio in non-integrated schools will be lowered to 20:1 within the next five years.

The first step in the reduction of pupil-teacher ratios throughout the school system will be taken in 1983-84 when pupil-teacher ratios will be reduced to those in effect in 1981-82. Current pupil-teacher ratios and those proposed for 1983-84 are as follows:

1982-83	**1983-84 (1981-82 Level)**
Kg. - 30:1	Kg. - 25:1
1-3 - 35:1	1-3 - 26:1
4-12 - 35:1	4-12 - 30:1

Absent an allowance for the loss of students who would transfer to County districts, it is estimated that 350 additional teachers would be needed to lower the ratios as planned for 1983-84. The actual number of additional teachers needed should be considerably less than 350; however, that number can only be determined when the number of students who transfer to the County and the number of County students who transfer to the City is known. For example, should 3,000 students transfer to County districts in 1983-84 and 500 County students transfer to the City, the net loss of City students would be 2,500. This would reduce the need for additional staff to change the pupil-teacher ratios to the proposed 1983-84 levels by an estimated 93 teachers.

The reduction of pupil-teacher ratios will require the opening of additional classrooms, at least initially. As the net enrollment declines through the transfer of students to and from the County, the need for additional classrooms and additional teachers should decrease.

Should enrollments in non-integrated schools remain the same as projected for 1983-84, some 265 additional teachers would be needed to reach an interim goal of ratios of 20:1 in kindergarten, 21:1 in grades 1-3 and 25:1 in grades 4-12. However, a reduction in enrollment through the transfer of students to County districts could reduce the need for additional staff substantially.

Pupil-teacher ratios in pre-schools would be 15:1 per session for both teachers and aides.

The reduction of class size will facilitate more efficient classroom management and provide for greater time on learning tasks which is essential to the mastery of cognitive skills.

Staff Selection

Staff selection criteria and procedures will be reviewed and strengthened to ensure high standards for the selection of new staff. The criteria will, among other things, relate directly the requirements of the effective schools model, the strong emphasis on teaching basic skills and high expectation for students and staff.

Performance Evaluation

The instruments and processes for the assessment of staff performance will be evaluated and revised where necessary to assure high performance standards.

3. **Effective Schools Model**

An effective schools model which has been adopted in urban areas across the country and piloted in certain St. Louis Public Schools will be adopted as the major emphasis for all St. Louis Public Schools.

This generally accepted model identifies five characteristics of effective schools and delineates steps to take to ensure that these characteristics prevail.

(1) **Strong administrative leadership** is ensured through a self-assessment process, through appropriate inservice training and through continuous assessment of the impact leadership has on the total operation of the school.

(2) **High teacher expectations** is a two pronged thrust. Teachers must have high expectations for their own performance which flows from strong, effective administrative leadership. Of equal importance is the belief that teachers must have high expectations for students they teach. Inservice orientation for teachers will be designed to

promote techniques for helping students acquire high self-expectations. Team planning, guided by inservice consultants, should provide methods which promote the positive attitudes which lead to the acquisition of basic skills.

(3) **Positive school climate,** the third characteristic of effective schools, flows from the first characteristics. Schools having strong administrative leadership, teachers with high expectations for themselves and students, and staffs that plan cooperatively have the basic elements for a positive school climate. This characteristic is specifically treated in inservice training sessions for staff and parents are also involved at this step.

(4) **Emphasis on basic skills,** another of the characteristics of effective schools undergirds the interrelates with each of the other characteristics. All constituents - administrators, teachers, students and parents - are made aware that basic skills acquisition is a number one priority. The scope and sequence of skills adopted by the system guide each individual school as staffs work to ensure that students in their school will attain those skills which are required system-wide. Strengths and weaknesses in basic skill areas are assessed so that appropriate emphasis will be given to attaining skills where there are deficits and that skills that are acquired are maintained.

(5) **Ongoing student assessment** is also characteristic of effective schools and is carefully planned and implemented. This characteristic is ensured through participation in the system-wide testing

program, of course. But of equal importance are mastery tests prepared by teachers or such tests as are integral components of curriculum materials and those assessment tools accompanying the Competency Based Education materials in use system-wide.

The implementation of the Effective Schools Model requires sufficient, well trained staff working together to provide the best possible education for future productive citizens. As the characteristics of effective schools infuse the total school system, the major goals of the system will inevitably be met.

4. **Provisions for a Full Complement of Staff**

As previously stated, the implementation of an effective schools model requires that sufficient staff be available to schools implementing that model. The St. Louis Public School System was required because of serious financial deficits to reduce staff. This section speaks to restoring staff and ensuring that a full complement of staff is available. A previous section has addressed lowering pupil teacher ratios and providing sufficient regular classroom teachers who are carefully selected and assessed in an ongoing effort to assure effective schools.

It is a fact acceppted by educators, parents, students and community that whereas the development of the cognitive basic skills is the top priority of school systems, there are additional facets of education requiring the attention of public school staffs.

Accordingly, the restoration of such specialized staff as art, music and physical education teachers will fill the void which currently exists in the provision of quality educational experience in these areas. Students will have the opportunity to develop related skills as fully as possible.

Likewise, extra-curricular programs such as intramural sports and interscholastic athletics are important in the broad context of providing worthwhile life-long interests and skills for students. To fulfill this obligation of effective education, coaching positions at the secondary level will be reinstated.

Student entering the formalized structure of first grade with prerequisite skills will profit from the emphasis on basis skills in all effective school settings. Therefore, sufficient staff to provide all day kindergarten programs for all students entering the St. Louis Public Schools will be provided.

Acknowledging that there are children with handicapping conditions and further acknowledging that these children are worthy human beings deserving of the best educational services, consideration is given to providing sufficient staff to meet the educational needs of these children. Whether handicapping conditions are orthopedic, sensory, emotional or intellectual, they must be effectively addressed. Staff will be available in the public school system to address these needs to the extent required.

Support staff required for meeting basic needs of students will be reinstated as needs indicate. In this category are school nurses, social workers, psychologists and psychological examiners.

Implementing an effective schools model necessitates such ancillary staff.

Additionally, support staff at a central level required to ensure long-range planning efforts, curriculum development, staff development and evaluation and assessment of staff and students will be hired and reinstated as required.

All considerations related to raising staff to full complement will strengthen the concentrated efforts to achieve the

goal of improving the quality of education throughout the school system.

5. **Curriculum Development**

A five-year plan has been developed for the revision of curriculum. Curriculum development will be interdisciplinary in approach and will be supportive of the effective schools concept. Efforts will address the refinement of scope and sequence charts for the basic skills, the need for the frequent assessment of student progress and the means for conducting such assessments.

Curricula will also be developed for the Early Infant/Parent Centers and Pre-School Centers which will be established to serve families throughout the City. These centers will provide programs which are designed to ensure that children will be prepared to benefit fully from their educational experiences in the formal kindergarten through grade twelve program.

Measures to improve the quality of education must include efforts to ensure the access of students to adequate learning resources and a rich variety of learning experiences. The City Board proposes to improve and expand its library and other media resources and services and to conduct programs which provide access to the rich educational experiences available through cultural and other community instituations. Programs to promote computer literacy will be provided as will expanded programs in career education and cooperative education.

6. **Staff Development Division**

Strong support for curriculum development and implementation will be found in the establishment of a Staff Development Division. The major goal of the Division will be to provide effective schools orientation, prepare staff for local school assessment relative to the characteristics of

effective schools and prepare staff for planning local school strategies for the attainment of those characteristics for each school. Curriculum development and revision, the lowering of pupil-teacher ratios, the rehiring of staff, the hiring of new staff and staff exchanges, will result in significant alteractions to the environment of the classroom teacher and the building adminstrator and will require educators at all levels to utilize new information and/or techniques in the performance of day-to-day activities.

The Staff Development Division would have the following goals:

a. To assist in the implementation of the effective schools program in all schools within the system by providing individual school staffs with the necessary training they need to put the program into effect. By working closely with the building staff, Staff Development will ensure strong support for the effective schools program.

b. To train staff in newly developed or revised curriculum.

c. To address the specific staff training needs in non-integrated schools.

d. To address human relations needs specifically as part of the new educational environment.

e. To address any other aspects of the new educational environment in schools.

All of these goals would be pursued through the provision of inservice sessions for large groups, single school or department inservice sessions, and in individualized follow-up sessions for teachers, administrators or other staff.

7. **Facilities**

The St. Louis Board of Education has a responsibility to efficiently operate, maintain and improve, where necessary, in excess of 9 million square feet of aged building facilities on over 135 separate sites, housing integrated, non-integrated and magnet schools.

The general condition of the St. Louis Public School facilities is one of rapid deterioration, extreme deferred maintenance, and general old age. This situation can better be understood by examination of some very basic data and information as follows.

Age Distribution
of Basic Operating Facilities of the St. Louis Public Schools

Period of Basic Construction	Age Range	Approx. Building Area	Approx. % of Total
Prior to the turn of the century	83 to 112 yrs. old (17 bldgs.) 7 non-integrated 5 integrated 3 magnet 2 alternative	845,000	9%
Between1900-1908	75 to 83 yrs. old (22 bldgs.) 8 non-integrated 10 integrated 4 school support facility	1,434,000	15%

Between 1908-1918	65 to 75 yrs. old (20 bldgs.) 8 non-integrated 6 integrated 6 magnet	1,646,000	19%
Between 1918-1933	50 to 65 yrs. old (31 bldgs.) 11 non-integrated 8 integrated 8 magnet 2 alternative 2 school support facility	2,516,000	26%
Between 1933-1948	35 to 50 yrs. old (13 bldgs.) 5 non-integrated 3 integrated 2 magnet 3 school support facility	681,000	6%
Between 1948-1967	16 to 35 yrs. old (39 bldgs.) 28 non-integrated 2 integrated 4 magnet 4 school support facility 1 alternative	2,238,000	24%

Most notably, the data show that:

Nearly one fourth of the building area of the St. Louis Board of Education is over 75 years old. This building area

alone compares to the total district building area of some of the largest and newest metropolitan area county districts.

Nearly one half of the building area of the St. Louis Board of Education is over 65 years old.

More than two thirds of the building area of the St. Louis Board of Education is over 50 years old.

Moreover, nearly one tenth of the building area of the St. Loius Board of Education was built before the turn of the century with four basic facilities over 100 years old.

The aged facilities of the St. Louis Board of Education are currently in a severely deteriorated and sometimes dilapidated physical condition and are in immediate need of not only a major deferred maintenance program, but also a general improvement, renovation and modernization program.

The Relationship of Efforts to Improve Educational Quality to the Upgrading of Facilities

Every effort should be made to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process. This is accomplished through providing buildings and grounds which are safe, clean, attractive, clement, healthful, efficient, and functional in terms of the current technology and teaching program laboratories.

School facilities which are not safe, clean, attractive, clement, healthful, efficient, and functional, create distractions which inhibit the learning process from a variety of perspectives. Consequently, steps need to be taken to remove such inhibitors in order to provide a milieu in which the student is free to concentrate on learning and developmental tasks and the teacher has at hand an appropriately

designed and furnished space and the needed resources which will contribute most effectively to the learning process.

It is firmly believed that the above relationship is valid. Therefore, it becomes imperative that the Board obtain sufficient facilities funds to not only provide for deferred maintenance but also to initiate a comprehensive program for general renovations, associated program improvements, and modernization of its facilities.

In addition, staff reductions have impacted the Groundskeeping Division and the Building Maintenance and Repairs Division. Staff must be restored to ensure the consistent, continuous services required to maintain upgraded facilities and grounds.

8. **Evaluation and Assessment**

Key to the improvement of the quality of education is the effective use of the products of evaluation and research. The City Board's Division of Evaluation will play a greater support role in this effort. The products of this unit will provide guidance for the long-range planning efforts of the district, the management of curriculum and instruction, the planning and provision of appropriate staff development opportunities for all staff and the continued targeting of the school district's efforts on the achievement of its educational objectives.

The implementation of the effective schools model carries with it many new assessment requirements. School staffs must assess their individual schools relative to the characteristics of effective schools. Instruments will be needed for teachers, administrators, parents and students to assess school climate. Effective schools monitor student progress frequently so that staff can be constantly aware of learning progress in relation to instructional goals and can adjust

teaching efforts efficiently. All of these requirements indicate a greater reliance on the expanded use of the products of evaluation and research.

This is not to say that evaluation would concern itself simply with outcomes. Process evaluation is essential to any form of continuous corrective feedback. Working hand-in-hand with all components of the Plan, especially with Long-Range Planning, evaluation would assess such matters as the effectiveness of the management and logistics of the Plan and whether services have been reasonably planned and delivered. Only then can the human and material resoures of the school district be targeted consistently upon the provision of quality educational experience for the children and youth of the community.

Special Provisions for Non-Integrated Schools

In addition to the measures for the improvement of instruction throughout the school system from which the quality of education in integrated, non-integrated and magnet schools will be greatly enhanced, additionall [sic] provisions will be made to upgrade the quality of education in non-integrated schools. Such provisions range from the establishment of pupil-teacher ratios which are lower than the reduced pupil-teacher ratios for other schools to the establishment of non-integrated schools of special emphasis. These provisions may be categorized as instructional or motivational in nature and are described briefly as follows:

1. **Instructional Programs**

   a. **Lower Pupil to Classroom Teacher Ratios**

      Subsequent to 1983-84, the City Board proposes to reduce pupil-teacher ratios in non-integrated schools to an interim goal of five students below the proposed system-wide ratios for 1983-84 and to a ratio of 20:1

within five yars. [sic] This ratio is estimated to be five students below the average for county districts and the proposed ratio for regular integrated schools and magnet schools.

Should enrollments in non-integrated schools remain the same as projected for 1983-84, some 265 additional teachers would be needed to reach an interim goal of ratios of 20:1 in kindergarten, 21:1 in grades 1-3 and 25:1 in grades 4-12. However, a reduction in enrollment through the transfer of students to County districts could reduce the need for additional staff substantially.

b. **After-School, Saturday and Summer School Experiences**

Remedial instruction and appropriate learning enrichment opportunities will be provided. Such remedial programs will provide more "time on task" in the development of cognitive skills. Enrichment experiences will be linked to courses of study and will promote the full understanding of subject matter and its various applications in the broader community which cannot be acquired in a classroom setting alone. These experiences will be designed as extensions of classroom activities rather than replications of them.

c. **Parental Involvement**

Parent and staff seminars will be instituted to promote a mutual understanding of the school's mission and parental expectations of the school. Additionally, opportunities will be provided for parents to become tutors of their kindergarten and primary grade children. The involvement of parents as partners in support of learning is an important characteristic of

effective schools. Such involvement is incorporated into the effective schools model.

d. **Schools of Special Emphasis**

Resources will be provided for non-integrated schools to develop programs of special academic emphasis for individual schools. Many black students, for one reason or another, will not be able to enroll in a magnet school or transfer to the County but still wish to receive alternative educational programs. Schools of special emphasis would be designed to meet those needs and interests.

2. **Motivational Programs**

a. **Motivational Recognition Experiences**

The motivational recognition experiences programs will provide a number of activities which will make available to pupils opportunities for success and recognition. Such activities as writing contests, debates, math competitions, science expositions and others will have motivational effects on students as well as provide numerous oportunities for them to receive recognition for both participation and achievement. These activities would be scheduled throughout the year, and would be coordinated with the curriculum in order to ensure that pupils recieve maximum benefits from participation. Activities would be scheduled for pupils in grades kindergarten through grade 12.

b. **Role Model Experiences**

Students in non-integrated schools will be provided with successful role models to encourage them to continue in their academic careers. Assembly programs and other large group activities, and classroom ex-

periences with local, state and national figures will be arranged. These experiences will be coordinated with curricular materials in such a manner as to support the regular instructional program. Actual contacts with successful role models will encourage academic achievement, particularly in social studies and other areas which address current events.

c. **Shared Experiences Program**

Provisions will be made for the establishment of student concerns committees in each elementary and middle school. The committees of student representatives will meet regularly with the principal and will address such issues as student morale, attendance and behavior. Members will participate with staff in efforts to create a school climate which is conducive to the maintenance of an effective learning program.

V Part-Time Educational Programs

A. **Part-Time Ancillary Programs.** Many of the part-time ancillary programs are presently in operation in the St. Louis public schools and may be expanded to include participating districts.

Among those programs presently in operation which may be expanded are the following:

Pairing and Sharing
The Law and Education Project
Springboard to Learning
Career Education
The School Partnership Program
Ethnic Heritage
Radio Station KSLH

Another program which may be expanded for the benefit of both city and county students is the English as a Second Language (ESL) program. This program is presently opera-

tional in three schools that have been designated as ESL Centers. Students must be enrolled in the school and show need of ESL services before they can participate.

Additionally, cultural/educational institutions with long-standing and enviable records for their educational programs for school children as well as the adult community have made commitments to participate cooperatively in programs specifically designed to bring together students from city and county schools. They have well-trained staffs and well-equipped facilities for extending learning experiences beyond conventional classrooms to the broader environment of the community and the world at large, some of the institutions involved are:

KETC-TV
McDonnell Planetarium
Missouri Botanical Garden
Missouri Historical Society
Museum of Science and Natural History
Saint Louis Art Museum
Saint Louis Symphony
Saint Louis Zoo
United Nations Association
Urban League Library

The voluntary integration programs to be offered by these institutions will be a cooperative effort between each institution and the participating schools. As a first step, the institutions will establish certain general guidelines for their respective programs and extend the opportunity for participation to schools in the city and county. Faculty members and administrators will recommend students for participation in the programs.

While the format and scope of the programs will vary from institution to institution, each will have a common denominator: To bring together racially mixed groups of students from the metropolitan area districts periodically for programs of unique educational value.

Additionally, it is envisioned that cable television could become an integral part of the metropolitan voluntary plan.

B. **Part-Time Specialty Programs.** Students enrolled in part-time specialty programs shall attend classes a half-day for a complete semester or a full year. These programs include, but are not limited to:

Honors Art
Honors Music
Transportation
Mass Media

A student may participate by enrolling in that high school or by spending one-half day in his/her home school and the other half in the high school of the speciality. Honors Art and Honors Music shall be in a school setting which houses only these programs. For these last two programs, students must spend one-half day in their home school and the other half day in Honors Art or Honors Music Programs. All specialty programs are at the secondary level.

C. **Policies and Procedures**

1. Pupils must apply for admission into part-time specialty programs and will be admitted on a first-come, first-served basis with consideration being given to racial balance.

2. Part-time ancillary program experiences will be cooperatively planned and implemented by staff at the participating schools and institutional staff where appropriate with due consideration being given to racial balance.

VI. Faculty

A. **Definition of Teacher and Administrator**

1. As used herein, the term "school district" shall apply to each and every school district which is a signatory to this agreement.

2. As used herein, the term "teacher" shall include all certificated staff except certificated adminstrators. The term "administrator" as used herein, shall include all administrators, whether certificated or not.

B. **Purposes**

1. Recruitment and selection of newly hired employees and the terms and conditions of employment shall be maintained and conducted in a manner which does not discriminate against black people because of their race.

2. To increase the number of black applicants who satisfy the school district's standards for employment.

3. To implement a system for monitoring and recording school district efforts to secure black applicants for teachers and administrators.

4. To seek to achieve a goal in its staff of teachers a work force of at least 15.8% black.

5. To seek to achieve a goal in its staff of administrators a work force of at least 13.4% black.

C. **Recruitment of Teachers and Administrators**

The school district shall be responsible for recruiting black applicants for employment as teachers and administrators using any reasonable means available to it. The school district shall keep records to show how this section has been implemented and to report in the annual report specified herein in Section F herein the steps taken pursuant to this section.

D. **Application and Selection Procedures**

1. The school district shall initiate and maintain a record system sufficient to identify for each applicant, his or her identity, race, position(s) applied for, position(s) considered for, disposition, the source of the applicant's knowledge of the job

opening, the date the application was received and any other information required to satisfy the provisions of Section F hereof.

2. The school district will retain an affirmative action file of all black applicants.

3. Whenever the school district has a vacancy, the Affirmative Action file shall be reviewed to identify qualified black candidates for consideration for such vacancy.

E. **Annual Hiring Goals**

Subject to the provisions of paragraphs 1 and 2 hereof, the following hiring goals for the employment of new teachers and administrators, to be judged on an annual basis, shall be applied:

Number of New Hires	**Ratio - New Hires**
1 through 9	1 black: 2 white (33 1/3%)
10 through 20	1 black: 3 white (25%)
21 through 50	1 black: 4 white (20%)
51 or more	1 black: 5 white (16.6%)

For example, if in any year a district hired 17 teachers and/or administrators, the first 9 hires would be 3 black and 6 white and the next 8 hires would be 2 black and 6 white.

Each school district shall report to the Voluntary Interdistrict Coordinating Council and plaintiffs' counsel the number and percentage of teachers and administrators broken down by both black and white teachers and administrators as of the effective date of this agreement, such report to be filed thirty days after such date.

1. Nothing contained in this agreement shall be construed to require the employment of unqualifed [sic] teachers or the discharge or replacement of any teachers employed by a school district.

2. School districts shall be obliged to use their best effort to attain the goal and above stated annual hiring goals. Failure to

attain the goal or annual hiring goal may be justified, among other reasons, if a district demonstrates that such failure was because it hired the best qualified candidate for each position.

F. **Reporting and Enforcement**

Commencing October 1, 1983 and annually thereafter, each school district shall file a report covering teachers and administrators with the Voluntary Interdistrict Coordinating Council and each of the plaintiffs' counsel herein, containing total number of new hires, total white new hires, total black new hires, positions filled with new hires, rate of pay and total applications received in that year broken down between white and black applicants. The first such report shall contain such information for the period from the date of this agreement to September 15, 1983 and each subsequent annual report shall cover the period from September 16, to the following September 15.

If a district's annual hiring goal is not met and upon request of plaintiffs or their counsel each school district upon receiving such request shall provide within a reasonable time the following additional information, which shall not include the name of any person hired or of any applicant for employment:

1. Positions filled during the reporting period showing race, date of hire, position hired into, rate of pay, and reason for selection;

2. All applicants for positions filled during the reporting period showing race, date of application, position applied for and position considered for, reason for the rejection of other applicants for the position filled and date decision was made. If a district's annual hiring goal is not met and if plaintiff's counsel desires additional information to that previously provided pursuant to the terms hereof, plaintiff's counsel shall have reasonable access to these documents upon request to the school district's counsel and upon mutually agreeable terms.

The school district shall retain all applications, correspondence, applicant logs, interview sheets and all other documents relating to any application for employment and the basis for selection or rejection of any applicant, including the name and address of each individual applicant and/or person employed.

The provisions of this settlement agreement relating to the recruitment and employment of black teachers and adminstrators are subject to judicial enforcement; provided, however, except for good cause asserted, counsel for the movant, prior to seeking judicial enforcement, shall first confer with the school district's counsel or make reasonable efforts to do so, in an attempt to resolve any differences.

Nothing contained herein shall preclude any individual who believes he/she has been discriminated against because of race from asserting such claim in an appropriate forum whether or not this agreement's hiring or pupil goal has been met.

G. [sic]

All obligations pursuant to this agreement relating to hiring of black teachers and administrators, including the reporting requirements in Section F hereof, shall terminate at the time the hiring goals of 15.8% black teachers and 13.4% black administrators is reached, or the pupil goal of 25% black students is reached, whichever occurs earlier. The meeting of such goal or goals shall be documented by data reported to the Voluntary Interdistrict Coordinating Council and plaintiffs' counsel.

H. **Duty to Follow State Law**

Nothing herein shall require a district to violate any provisions of Missouri law and, in particular, the Missouri Teacher Tenure Act, as amended, applicable to both six director and Metropolitan school districts; provided however, in filling vacant teacher positions, districts shall use to the extent required and at their request, desegregation funds as may be ordered by

the Court and received by the districts because of their participation in this settlement agreement to fill such vacant positions through new hires of blacks to meet the annual goal set forth in Paragraph E.

4. I. **Teacher Transfers and Exchanges**

Voluntary interdistrict transfers of teachers will also be used to attain affirmative action goals when such transfer results in movement toward a district's annual affirmative action goal.

Voluntary teacher exchanges will be encouraged to enhance desegregation efforts.

a. Purpose

The purpose of the teacher transfer and exchange program among metropolitan and county school districts is to enhance racial teacher balance and teacher integration experiences in the districts. Another purpose of this program is to foster attitudes of responsiveness, cooperation, and innovation in meeting educational challenges.

b. Conditions

i. The exchange teacher shall remain an employee of the home district and will receive from the home district the scheduled salary and fringe benefits to which he/she is entitled as an employee of that district. Existing liability insurance agreements of districts shall be appropriately amended prior to any exchange or transfer to provide continued coverage for the exchange or transfer teacher.

ii. Any teacher who volunteers has the right to maintain affiliation with professional associations of his/her choice.

iii. Teacher tenure status shall not be affected by the special assignment to another school district.

iv. Personnel policies normally provided to teachers in the receiving district shall be given to exchange or transfer teachers.

v. The teacher shall receive from the host district mileage reimbursement for job related functions that others in similar positions receive. No mileage reimbursement shall be provided for travel to and from the worksite and the teacher's home.

vi. The school calendar of the host district shall be totally followed by the exchange or transfer teacher. The effective date of assignemnts beginning in the fall shall be determined by each district's calendar. When the beginning dates of the districts' second semesters do not coincide, the effective date of the exchange shall be the latter of the two for both exchange teachers. The effective date of administrative changes shall be agreed upon by the participating districts.

vii. Selection procedures may provide for visitations and interviews prior to acceptance by any of the parties involved.

viii. The exchange or transfer teacher's period of assignment shall be mutually agreed upon by the home and host districts. The exchange teacher is expected to serve full term of the exchange or transfer agreement. Should a request for transfer be submitted by the exchange or transfer teacher before the end of the agreed-upon term, the request shall be reviewed and action agreed upon by the home and host districts prior to any final determination.

ix. In the event of an exchange teacher's absence, the host district shall provide the substitute teacher, and

the home district shall pay the costs of a substitute teacher as billed at the scheduled rate of the host district for the balance of the period of the exchange.

x. Supplemental assignments of exchange teachers are permissible and may be made by either district during the exchange period. Extra-duty pay for all services performed in the host district shall be forwarded to the home district for deposit. The home district shall assume responsibility for making necessary employee deductions before issuing a check for the extra-duty assignment.

xi. The teacher exchanges and transfers shall be limited to full-time, tenured staff, except by mutual agreement of the individual districts involved.

xii. The evaluation of exchange and transfer teachers shall be as mutually agreed to by the home and host school districts.

xiii. The exchange or transfer teacher shall be expected to return to the home district at the end of the exchange or transfer assignment period.

xiv. When the exchange or transfer teacher returns to the home district, assignments will be based upon the home district's policies and procedures.

xv. An exchange or transfer teacher shall receive on a one time basis only a monetary bonus for the completion of one full school year of service under this section, such sum as may be agreed upon by the host and home districts.

xvi. The host district shall pay the transfer teacher's remuneration, including the cost of a substitute teacher's salary.

xvii. All transfers and exchanges shall be subject to the approval of both the home and host districts.

VII Parent Involvement

A. Each participating district shall encourage the parents or guardians of students transferring into or out of their district to participate in the educational process and shall not be restricted from or denied access to activities and processes provided to resident parents. In this regard, additional steps may be initiated by the district to foster this positive relationship. Among the areas which may require special attention by the districts are the following:

1. Parents may need an opportunity before the student transfers to visit the host school and meet the staff, particularly the student's teacher(s), in a supportive milieu that encourages further interest and participation.

2. Parents should be encouraged to participate actively in the parent organizations of the host school and district.

3. If transportation presents a problem for the parent, assistance might be arranged through carpools or other means as the district may decide.

4. Opportunities for evening conferences between teachers and parents could be provided.

5. Parents need to be informed about academic policies and discipline code procedures before the student completes the transfer process.

B. A parent advisory council under VICC with representation from all participating districts, which includes

parents of resident and transfer students, may be constituted on an annual basis. This council shall provide assistance to the Voluntary Interdistrict Coordinating Council in addressing parent and student concerns about the interdistrict voluntary plan.

VIII. Transportation

1. The Missouri State Department of Elementary and Secondary Education shall:

a. Provide transportation for interdistrict transfer students enrolled and participating in regular or magnet programs who reside more than one mile from the school site;

b. Provide transportation for students enrolled and participating in part-time ancillary programs and half-time speciality programs.

2. Any district may request to manage the transportation of their voluntary transfer students or voluntary transfer students attending other districts; and if such a request is made, the State shall approve same if it is cost effective and can be assimilated into the state operated transportation program.

IX. Administration

A. Establishment and Purpose of Voluntary Interdistrict Coordinating Council.

1. A Voluntary Interdistrict Coordinating Council ("VICC") shall be established as provided herein.

2. The purpose of the VICC is to coordinate and administer the student transfer and voluntary teacher exchange provisions of the settlement agreement. The VICC shall have no authority or responsibility for the operation of the school districts which are parties to

this agreement, and it is hereby expressly understood and agreed that all such authority and responsibility remains with the duly elected board of education for each school district, as provided by law. The VICC shall have no power to alter or amend the terms and provisions of the settlement agreement. The VICC shall have no powers beyond those expressly granted to it herein, or as may be granted to it by any amendment to the settlement agreement duly authorized by the unanimous consent of the parties and with approval of the Court.

B. **Membership**

1. The VICC shall have the following voting members:

   a. One person selected by each school district which is a party to this agreement;

   b. One person each selected by the National Association for the Advancement of Colored People ("NAACP") and by the Liddell plaintiff group as parties to this agreement; and

   c. One person employed by the State Department of Elementary and Secondary Education, or its successor, selected by the Commissioner of Education, or his successor.

2. The VICC may, in its discretion, invite teacher, parent and other interested organizations to select representatives to participate in the activities of the VICC as non-voting members.

3. Each appointing authority shall also select an alternate representative to the VICC. The alternate shall have the same power and authority as regular members in the absence of the regular member.

4. Each regular and alternate member shall serve for a term of one year. Each appointing authority shall name its initial representatives to the VICC within ten days after approval of this agreement by the Court.

C. **Voting**

Each person appointed pursuant to paragraph IX.B.1. shall be entitled to one vote on each matter submitted to a vote of the VICC. On all questions a majority of the VICC voting shall decide the issue. Alternate members shall have the right to vote in the absence of the regular member.

D. **Quorum**

A quorum shall consist of a majority of the voting members. Official business of the VICC shall be conducted in the presence of a quorum and not otherwise.

E. **Meetings**

1. The VICC shall determine the time, place and date of its meetings, and members are to be considered informed thereof by the action taken by it in making such determinations. Notice of meetings may be confirmed by the Executive Director. In addition, the Chairman, the Vice-Chairman in the Chairman's absence or a majority of the voting members may call special meetings upon appropriate notice to members of the time, place and purpose of the special meeting. The special meetings shall be limited to the purpose stated in the notice unless otherwise agreed by the members.

2. The VICC shall follow and be governed by the provisions of Chapter 610 RSMo. 1982 Supp, as it may be amended or revised from time to time, with respect to its meetings, votes and records.

F. **Officers**

1. The VICC shall elect a Chairman, Vice-Chairman and Secretary from its voting members to serve for a period of one year. No person shall be precluded from holding office because he previously held such office. These positions should rotate among the voting members and parties to this agreement. The position of Chairman shall be held by the City Board representative at least once during the first five years.

2. The Chairman shall have general supervision of the proceedings of the VICC. The Chairman, or in his/her absence, the Vice-Chairman, shall preside at all meetings of the VICC. The Chairman and Vice-Chairman may perform other duties as may be prescribed by the VICC.

3. The Secretary shall keep, or supervise the keeping of, the minutes of the VICC meetings; be responsible for the giving of all appropriate notices; and act as the official custodian of the records of the VICC.

G. **Staff**

1. a. The VICC shall select an Executive Director who shall report directly to the VICC.

   b. The Executive Director shall be responsible for the daily supervision and operation of the overall administrative duties of the VICC.

   c. The Executive Director shall, with the approval of the VICC, employ such full-time and part-time staff as may be necessary to carry out the duties of the VICC.

   d. The Executive Director shall appoint, with the consent of the VICC, a Recording Secretary to take and transcribe the minutes of VICC

meetings. The Recording Secretary shall serve upon terms to be determined by the VICC.

e. The Executive Director shall be an *ex officio* member of the VICC without vote.

2. The VICC shall select a Director of Student Recruitment and Counseling. The Director of Student Recruitment and Counseling shall have primary responsibility for the daily supervision and operation of the Student Recruitment and Counseling Center established herein and shall report to the VICC through the Executive Director.

H. **Fiscal Authority**

1. The VICC may authorize the Chairman, Vice-Chairman or Executive Director to enter into any contract or execute any instrument in the name of the VICC. Such authority may be general or confined to specific documents. All contracts, instruments, or other obligations shall be in writing, and shall be presented to the VICC for approval before being executed. Nothing herein shall be construed so as to impose any personal liability upon the members of the VICC for any such contracts, instruments or obligations.

2. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the VICC shall be signed by the Executive Director and countersigned by the Chairman. In the absence of the Chairman, either the Vice-Chairman or the Secretary may countersign such instruments. At least once each month, the Executive Director shall present to the VICC the vouchers payable for its review and approval. The Executive Director may establish a petty cash fund from which

disbursements may be made by the Executive Director pursuant to guidelines approved by the VICC. The Executive Director's authority is limited to budgeted amounts for expenditures as approved by the VICC.

3. All funds of the VICC shall be deposited to its credit in such banks, trust companies or other depositories as the VICC may select.

4. The VICC may, in its discretion, contract with any school district which is a party to this agreement to act as the VICC fiscal agent, or to provide other fiscal services as may be approved by the VICC.

5. The VICC fiscal year shall be from July 1 to June 30 annually.

I. **Rules, Operating Procedures and Forms**

The VICC shall adopt such reasonable rules, operating procedures and forms as it may deem necessary or appropriate to fulfill its functions under the settlement agreement, and as may be consistent with the terms of the settlement agreement. All such rules, operating procedures and forms may be modified, from time to time, consistent with the settlement agreement.

J. **Powers**

1. The VICC and its staff, in cooperation with the parties to this agreement, shall develop procedures to implement the student transfer and teacher exchange provisions of this agreement. The procedures shall be developed in a manner consistent with the principles as set forth in this agreement. The procedures shall be adopted by VICC as soon as practicable, but in no event later than forty-five days after approval of this agreement by the Court.

2. The VICC shall have the following responsibilities:

   a. To develop procedures for implementation of the student transfer and teacher exchange provisions of the settlement agreement;

   b. To supervise recruitment, counseling and placement of student transfer and teacher exchanges;

   c. To coordinate dissemination of information on available programs to the community;

   d. To assist in developing and implementing an effective and safe transportation system for student transfers, including assistance in setting standards for such implementation;

   e. To coordinate interdistrict safety and security services where necessary;

   f. To prepare an annual budget for its operations for approval by the parties and the Court;

   g. To assist in planning and implementing new magnet schools and magnet programs; and

   h. To report at least annually to the parties and the Court the steps taken to implement the settlement agreement. This report shall include information including but not limited to: student transfers; teacher exchanges; recruitment counseling and initial placement efforts; student placement and modifications and suspension and expulsion relating to transfer students. The Committee shall provide for:

      1. the collection of data providing evidence of compliance and assurance of non-discriminatory treatment, which may include such areas as promotion/retention, extracurricular activities, evaluation and placement.

2. evaluation of implementation process and identification of problem areas to be targeted for special intervention or additional resources. This may include school level data on requests for special education evaluations, disciplinary actions, rates of absence, withdrawal or drop-out.

i. To coordinate the development and dissemination of information about the schools and programs available in each of the school districts which are parties to this settlement agreement;

j. To keep accurate records of all teacher exchanges and status of such exchanges;

k. To receive and address concerns of voluntary exchange teachers relating to their participation in desegregation activities;

l. To assist in staff development and in-service training activities in order to prepare staff to function in integrated settings;

m. To perform such other activities as are necessary and consistent with this agreement.

K. **Student Recruitment and Counseling Center**

1. There shall be established a Student Recruitment and Counseling Center to have responsibility for all recruitment and counseling activities with respect to the student transfers under this settlement agreement. With the approval of the Court, the Student Recruitment and Counseling Center established herein shall include the existing office of the Recruitment and Counseling Center in the City of St. Louis established pursuant to the terms of the St. Louis Public Schools Intradistrict Desegregation Plan. Nothing herein shall

affect the operation of the existing Recruitment and Counseling Center in the City of St. Louis with respect to the Intradistrict Desegregation Plan, and all duties and responsibilities imposed herein shall be deemed additional to those presently performed by that Center. A parallel office of the Student Recruitment and Counseling Center shall be established in St. Louis County by the VICC.

2. The VICC may establish additional and/or satellite offices in the City of St. Louis and St. Louis County as may be necessary and appropriate. All existing satellite offices in the City of St. Louis will continue to operate according to the terms of the Intradistrict Desegregation Plan.

3. The Recruitment and Counseling Center shall with the approval of the VICC hire an adequate staff to perform its duties and responsibilities herein.

4. The Student Recruitment and Counseling Center shall have the following responsibilities:

   a. To process all applications for student transfers in accordance with the principles established by this settlement agreement;

   b. To conduct and coordinate recruitment drives with the school districts which are parties to this settlement agreement;

   c. To conduct and coordinate advertising campaigns relating to the student transfer provisions of this settlement agreement;

   d. To coordinate the development and dissemination of information about the schools and programs available in each of school districts which are parties to this settlement agreement;

e. To keep accurate records of all student transfers and the status of such transfers;

f. To collect and analyze student data for the VICC annual reports to the parties and the Court required by Section IX.J.2.h.; and

g. To perform such other activities as the VICC may deem appropriate and consistent with the terms of this settlement agreement.

5. The Student Recruitment and Counseling Center shall process all student transfers to part-time specialty programs or full-time programs. It shall not process students participating in part-time educational programs.

L. **Part-Time Educational Programs**

The VICC will coordinate the modification, addition or deletion of any such programs in the future.

M. **Transition**

1. With approval of the Court, the Coordinating Committee established pursuant to Order H(226)81, dated July 2, 1981, shall cease to exist upon the effective date of this settlement agreement.

2. Subject to approval by the VICC, all records, funds, property and personnel of the Coordinating Committee shall be transferred to the VICC on the effective date of this settlement agreement.

3. The VICC and the Coordinating Committee shall cooperate to effect an orderly transition.

4. The effective date of this settlement agreement shall be ten (10) days after the approval of this agreement by the United States District Court for the Eastern District of Missouri.

N. **Resolution of Procedural Disputes in the Administration of the Settlement Agreement**

1. It is expected that most issues which are the responsiblity of the VICC will be resolved by a majority vote of a quorum of the VICC.

2. If an issue cannot be resolved by the VICC or a member disagrees with a decision of the VICC, the following steps will apply:

   a. The Chairman will appoint a sub-committee of the VICC to study the issue and report back to the VICC with appropriate recommendations. This sub-committee should consist of three to seven members who represent a fair sample of persons who have a special interest in the issue.

   b. The VICC will then reconsider the issue and vote upon it.

   c. Should this review process not satisfy the parties involved, the issue will then be referred to a mediating panel of three persons. Each party to the dispute will select a member-at-large, and the third member shall be selected by the first two. The decision of this panel will settle the issue on the VICC level.

   d. Direct appeal to the Court will be the final procedure in such matters for all parties.

3. This Section is limited to procedural disputes which may arise in the administration of this settlement agreement. Nothing contained herein shall limit the parties from its rights under Section XII.

O. **Resolution of Individual Disputes and Grievances of Transfer Students**

The Recruitment and Counseling Center shall provide information and counseling to parents of transfer students

and to transfer students who have questions and/or grievances concerning their treatment as transfer students. In any such grievance or dispute other than involving a suspension of more than 10 days or expulsion, if after assistance and counseling have been made available and the applicable procedures of the host district have been completed, the grievance or dispute has not been resolved, the matter shall be referred to the VICC for mediation. VICC will secure the appointment of a mediating panel to conduct non-binding arbitration. Each party to the dispute will select a mediator and the third member will be selected by the first two.

If the dispute still is not resolved, the parties to the dispute may pursue such other legal remedies as are available including judicial enforcement of this settlement agreement, if appropriate.

Where a long-term suspension or expulsion is involved, a transfer student shall have the same rights as a resident student.

X. **Finance**

A. The fulfillment of the obligations of the parties is contingent upon an Order by the Court which establishes adequate funding for the obligations of the parties, consistent with the Agreement in Principle and this Settlement Agreement.

B. The payments for funding under this Agreement shall be as follows:

1. Each year each district shall calculate and certify separately its cost per pupil in a regular school and in a magnet school. The cost per pupil shall be all costs for instruction and support services as reported in the Annual Secretary of the Board Report (RD-5) minus all pupil transportation and food service costs. The

State shall pay these costs for full-time equivalent transfer pupils to the districts membership. The State shall pay separately to the host district the then current cost per pupil less the amount of State aid and trust fund allocation per pupil. However, each host district shall report each transfer pupil as a resident pupil for the purposes of determining all forms of State aid and as part of each host district's eligible pupil count for the purpose of determining trust fund allocations.

Each host district shall estimate the full-time equivalent of transfer pupils to the district's membership and transmit such estimate to the State in September of each year. A correction will be made in January of each year and a final adjustment made in June. Payments shall be made by the State through forward funding paid monthly to each district based upon the September estimate as corrected.

2. No later than 30 days after the entry of the funding order, each school district participating in the Agreement shall irrevocably elect and notify the State of its election of one of the following options:

   a. Each home district shall receive from the State for each student who voluntarily transfers from his or her district to a host district under this agreement one-half of the State aid it would have received had the student remained in his/her home district. This State payment shall be made for each district for a period of five years or any extension of time agreed to by the parties subsequent to the Court's approval of this agreement.

   b. Beginning with the 1984-85 school year each district which sends more transfer pupils than it

receives under this agreement and which thereby experiences a decline in its actual enrollment shall report its second preceding school year's actual enrollment for purposes of determining State aid and as part of each such district's eligible pupil count for purposes of determining trust fund allocations.

3. The cost of the incentives for provisions for voluntary teacher exchanges under Section VI (Faculty), the cost of student recruitment, start-up costs and building modification costs of new magnet schools and expanded magnet costs to schools programs, one-time extraordinary costs (other than hiring of personnel) such as the costs associated with reopening a closed school, the costs of community involvement centers and part-time educational programs, transportaiton of transferring pupils, the operating expense of the VICC, its staff and the Recruitment and Counseling Center and each of its offices, the costs relating to the improvements in educational programs offered by the City Board in Section IV (Quality Education) and such other costs incurred pursuant to this Settlement Agreement shall be paid by such combination of additional State funding pursuant to Court of Appeals for the Eighth Circuit's decision in *Liddell et al* v. *Board of Education et al.,* 677 F.2d 626, 641-642 (8th Cir. 1982), *cert. denied,* 51 U.S.L.W. 3258 (Oct. 5, 1982) (No. 81-2022) and a tax rate increase in the City of St. Louis as shall be ordered by the Court. These payments shall be in addition to the payments set forth in paragraphs a and b above.

4. If any school district obtains desegregation assistance from an outside source, the amount of such funding shall be deducted from the State's funding re-

quirements under this Settlement Agreement. In calculating State payments under subsection a hereof, the State shall determine how much money would have been paid in State aid to the home districts from the State Foundation Funds had the transfer pupils remained in their home districts. That sum shall be applied to the costs of this plan for the purposes set forth in paragraphs 1 and 2 hereof and shall continue to be charged to the Foundation Funds. However, all other costs and payments required under this plan shall not be funded from the Foundation Funds. The State shall not decrease its level of funding for education below the amount of funding established for the 1982-83 fiscal year. Pupils who are accepted in a host district shall not be required to pay any fee to the host district as an out-of-the district pupil.

5. Each district shall prepare a budget setting forth the estimated costs which it will incur as a result of this Settlement Agreement and present said budget to the Court for approval and appropriate funding orders at a date to be determined by the Court.

XI. Other Provisions

A. The City Board shall be invited to join the Cooperating School Districts for the St. Louis Suburban Area, Inc.

B. The Liddell, Caldwell and City Board Plaintiffs are entitled to "reasonable" attorneys' fees and costs of litigation to be paid exclusively by the State after a full hearing on attorneys' fees.

C. Participation in this settlement agreement by any school district shall not be deemed an admission of liablity nor an element of proof of liability in any interdistrict school desegregation case.

D. The parties acknowledge that this settlement agreement may be inconsistent with the May 21, 1980 Order as amended and if so, the terms of the May 21, 1980 Order as amended shall be modified, with the approval of the Court, to be consistent with this settlement agreement.

E. Consistent with the Agreement in Principle, there shall be no court ordered mandatory, interdistrict transfers of white or black students until after a hearing on liability as provided in Section XII; the 23 suburban school districts in St. Louis County will continue to exist as provided in Section XII; the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be provided by the Court as provided in Section X; and black students in suburban school districts that have a minority enrollment of 50% or greater enjoy transfer rights as provided in Sections II and III.

F. The parties recognize that some school districts view the neighborhood school concept as a desireable educational tool. Under this paragraph no district will be required to adopt or abandon a neighborhood school plan and its customary attendance areas. Districts presently operating under a plan established by court order or agreement with any federal agency which addresses the elimination of racially identifiable schools shall not be affected by this paragraph so long as the court order or agreement remains in effect or the district continues to follow the court order or plan.

1. Districts which have exceeded the plan goal (25% black) for the district, but have within the district individual schools with student ratios of more than 50% black shall permit the black students attending those schools the same interdistrict transfer rights as are conferred upon black students attending majority black districts.

2. Districts which are at the plan goal (25% black) or below which have within the district schools with student ratios of more than 50% black shall extend to black students attending those schools the right to transfer intradistrict to another school whose black/white ratio does not exceed 25% black—75% white.

XII. Stay

A. The litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims will be stayed for a period of 5 years to permit full implementation of the provisions of this settlement, including voluntary transfers, magnet schools, quality education, and affirmative action under terms set forth below.

B. The stay will not preclude judicial enforcement of the terms of the settlement agreement.

C. In July of each year, beginning July 1, 1984, each of the school districts that is a party to this settlement agreement shall submit to the parties and to the VICC an annual report describing the racial composition of the faculty and student body in that district, and the steps taken to implement the settlement agreement. Any district which has not met its annual target may include in the report factual observations and conclusions addressed to that issue. In addition, each of the other parties to this agreement shall submit to the parties and to the VICC an annual report describing their activities under this agreement, according to the same schedule.

D. When a district reaches its plan ratio within five years or any extension of time mutually agreed to by the parties, it is entitled to a final judgment declaring that it has satisfied its interdistrict pupil desegregation obligations. A district shall also be entitled to a final judgment if within five years it has enrolled 90% of the additional black students required to satisfy its plan

ratio calculated pursuant to Section II.A.3. so long as the total number of additional black students attending schools in districts with plan ratios (all districts listed in Section II.A.2.b.) equals or exceeds the number of such black students who would have attended such schools had all such districts met such plan ratio. In making this latter calculation, resident students in excess of the plan goal shall not be included and interdistrict transfer students in excess of the plan goal shall be included.[1]

---

[1] Assume districts X, Y and Z each have a current enrollment of 100 students of whom none are black. If no black students move into these districts, each will have to accept 18 transfer students (18 is approximately 15% of 118). Assume, however, that in five years, while District X still has no residential black students, District Y has five residential black students (total enrollment 105), and District Z has 18 residential black students (total enrollment 118).

There are two ways for these districts to satisfy the plan ratio:

A. Each district must have accepted enough black transfers to bring its minority enrollment to 15%. Thus, District X must have accepted 18 black transfer students, District Y must have accepted 13 black transfer students and District Z need not accept any. In other words, the three districts together must have accepted 31 interdistrict transfer students.

B. Assume District X has accepted only 16 interdistrict transfer students (i.e. 90% of the plan ratio of 18). It will, nevertheless, have satisfied its obligation if, for example, District Y has accepted 15 students.

To illustrate:

Dist	White Enrollment	Residential Black Enrollment	Transfer Black Enrollment	Total
X	100	0	16	116
Y	100	5	15	120
Z	100	18	0	118
		23	31	154

In the alternative, District X will have satisfied its obligations if District Y accepts 13 transfer students and District Z accepts two students.

The plaintiffs shall not seek any further interdistrict pupil desegregation relief through litigation.

The school district's only continuing interdistrict obligations under the settlement agreement that are judicially enforceable are to cooperate in the recruitment and promotion of transfers under Sections 4a, c, f, and h of the agreement in principle as implemented by Sections II and IX hereof, to accept transfer students under Section 1 of the agreement in principle as implemented by Section II hereof, and to participate in the magnet program established under Section 2 of the agreement in principle as implemented by Section III hereof in order to reach and maintain the plan goal (25 percent). The Court will relinquish active supervision two years after the five-year period.

E. If a school district does not meet within five years its plan ratio or the numerical requirements as set forth in paragraph D above, then

1. Following completion of the monitoring and negotiation process described in paragraphs F and G below, plaintiffs may renew the litigation involving paragraph 12(c) and their pending interdistrict claims as to any such school district.

2. In such litigation, plaintiffs must establish liability and they shall not seek school district consolidation, dissolution or reorganization and they further shall not seek a remedy beyond the plan goal (25 percent).

To illustrate:

Dist	White Enrollment	Residential Black Enrollment	Transfer Black Enrollment	Total
X	100	0	16	116
Y	100	5	13	118
Z	100	18	2	120
		23	31	154

3. Any remedy shall distribute the burdens of desegregation equitably between the minority and the non-minority students in the school districts involved in the litigation under this paragraph.

4. In devising any remedy the Court will consider the monitor's report. The monitor's report shall not be conclusively binding but shall be entitled to weight.

F. **The Monitor**

1. By October 1, 1987, the plaintiffs and the school districts that have not yet satisfied the numerical requirements of paragraph D or the district's plan ratio above will meet and attempt to agree on the selection of a monitor. If they are unable to do so, each side will select its own monitor and the two monitors will then select a third. The third monitor shall be a person who has not been involved in any aspect of this litigation and has not taken a public position on any aspect of the case.

2. The Monitor shall make an investigation and positive recommendation. The Monitor shall by January 31, 1988 conduct an informal fact finding hearing at which all interested persons shall have an opportunity to be heard.

3. By April 1, 1988 the Monitor shall file a final report. The Monitor's review shall be limited to:

A. Determine the steps taken by the district to meet its plan ratio;

B. Investigate what further steps can be taken to assist the district to meet its plan ratio;

C. Make recommendations as to steps to be taken by the parties to assist the district in meeting its plan ratio and the time period which the Monitor believes is necessary for the district to reach its plan ratio. These recommendations shall be consistent with the obligations of the parties contained in Sections II and III of this agreement.

4. The Monitor shall file his report with the Court. If the district and the plaintiffs agree to follow the recommendations of the Monitor, then those recommendations shall be put in place and the stay extended for the period of time contained in the recommendations.

5. If the district or any plaintiff does not accept the recommendations of the Monitor, the plaintiffs or any of them may proceed to renew the litigation.

6. If plaintiffs fail to renew the litigation within a period of two years from the date of the filing of the Monitor's report, they shall be barred from renewing the litigation unless an extension is mutually agreed to by the district and the plaintiffs.

G. **Negotiations**

Following the issuance of the monitor(s)' report on April 1, 1988, the parties may meet and attempt to agree upon a course of action for each district which course of action may be at variance with the Monitor's recommendations.

Signatories to the Settlement Agreement [omitted]

APPENDIX

Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision To Improve Instructional Quality In Non-Integrated Schools

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A. Improvement of the Quality of Education Throughout the School System

Introduction

Consistent with the terms of the Agreement in Principle, the City Board has analyzed the needs of the school system and proposes herein the measures it would take to improve the quality of education in all of its schools. There are needs which relate to the improvement of curriculum and the quality and range of learning experiences to which students have access and there are critical needs which relate to the instructional and management support services which are required to ensure that all students have access to an education which is consistently high in quality. There are also critical needs which relate to the condition of the school system's aging school facilities. These needs must be addressed to ensure that the physical learning environment is supportive of an improved instructional program. Those needs which relate to the improvement of the quality of education throughout the school system are identified in this section as are the measures and resources requfred [sic] to address those needs.

* * *

[REMAINDER OF APPENDIX TO SETTLEMENT AGREEMENT, PROVIDING DETAILED DESCRIPTION OF EACH PROGRAM AND ITS COST IS OMITTED.]

APPENDIX D

[1-129] Jerome Jones, Proponent Signatories' Witness, Sworn

The Court: You may inquire, Mr. Brostron.

DIRECT EXAMINATION

By Mr. Brostron:

Q. Would you state your name, please?

[1-130] A. Jerome Jones.

Q. And what is your occupation, Doctor Jones?

A. I'm an educator and presently superintendent of schools in the City of Saint Louis.

Q. And when did you take over that position?

A. March 1st, 1983.

Q. Would you briefly give us your educational background, Doctor Jones?

A. Yes. I have a Ph.D. in urban planning and policy development, as well as several degrees in social sciences. I began my educational career as a teacher in Washington, D.C. I worked as an administrator in the Philadelphia school system, administrator for the New Jersey Department of Education, the superintendent of schools in Providence, Rhode Island, and Stamford, Connecticut.

Q. In the course of your employment activities, have you ever participated in any desegregation planning?

A. Yes. While an employee of the New Jersey Department of Education, I generally participated in desegregation activities of the State Department of New Jersey regarding the 601 school districts in that State. I also developed desegregation plans for the City of Providence and the City of Stamford, Connecticut.

* * *

[1-150] **Cross-Examination**

By Mr. Dierker:

Q. Doctor, so that the record is clear, are you an expert in school desegregation?

A. No, I'm not an expert.

Q. Directing your attention to the financial provisions of the proposed settlement agreement, did you participate in the negotiation of those provisions?

A. No, I did not. Perhaps I can ask a question. You're talking about the agreement among the districts relative to the financial issues for interdistrict transfers?

Q. I'm referring to Section X of the agreement, the settlement agreement, Exhibit 1, which is in front of you.

A. All right.

* * *

[1-151] The Witness: I was involved in discussions which led to these agreements.

Q. (By Mr. Dierker) Do you know who originated the idea that the funding would be exclusively from the state and a tax increase by the City—in the City of Saint Louis?

A. No, I do not know who exclusively originated the idea.

Q. Well, did it originate with the City Board?

A. I'm not sure. I'm not sure.

Q. So it could have originated with the City Board to your knowledge?

A. I'm not sure of the source of the origin of those proposals.

* * *

[1-152] Q. (By Mr. Dierker) Doctor, I've handed you documents which have previously been marked for identification as City Exhibits G and H; could you identify Exhibit G for us?

A. Exhibit G is a summary of the proposed costs of the quality ed section of this proposal—agreement.

Q. Do you know how that document was prepared?

A. Yes, I do.

Q. Could you tell us how that was prepared?

A. This document was prepared in conjunction with staff members and me in the Saint Louis school—

* * *

Q. (By Mr. Dierker) Doctor, I believe you were telling us how those were prepared?

A. These are the cost estimates for those items which are contained in Exhibit 1 and Exhibit 2, as revised.

[1-153] Q. All right. Those items—you said Exhibit 1—Exhibit G, does Exhibit G reference transportation expenses or County magnet school expenses?

A. No, it doesn't.

Q. Could you identify and describe how Exhibit H was prepared, if you would?

A. Exhibit H is a five-year projection of costs as it relates to the proposed agreement and each year is discretely broken out in terms of the anticipated costs as of the time this document was prepared.

Q. All right. There are some differences between the numbers for year one of the plan, as represented in Exhibits G and H, and as represented in Exhibits 2 and 3; is that correct?

A. Yes.

Q. In other words, we're only going to spend $87 million in year one under the revision; is that correct?

A. That's correct.

Q. Doctor, these documents, G and H, were prepared by employees of the City Board for the use of yourself and others within the city and reviewing and evaluting the settlement agreement; is that correct?

A. Yes. These were documents which were prepared to give us some idea as to what the cost factors were related to the programs.

Q. Okay. so in summary, at least one of your estimates was that **[1-154]** for only part of the plan, an aggregate cost over five years of $836 million is predicted; is that correct?

A. That's correct.

Q. Were there any discussions or projections or thoughts in the negotiation process concerning what happens at the end of five years?

A. No. Our concern was developing cost estimates relative to the proposed items for the five-year period.

Q. Is it your understanding that the settlement agreement contemplates that any funding ordered by this court would remain in place indefinitely even after the five years?

A. No, but that there would be review at appropriate times to determine levels of funding.

Q. When you say "review at appropriate times," do you mean that you might come back to court five years from now and ask the court for more money?

A. From year to year.

Q. From year to year. Doctor, you are, of course, aware that the City Board is an interdistrict plaintiff in this case as it presently is comprised; are you not?

A. Yes, I am.

Q. Is this settlement agreement, in your understanding, designed to resolve the interdistrict claims alleged by the City Board?

A. The City itself, the City school board was originally the defendant, if you'll recall, and it's my understanding that this **[1-155]** document is designed to deal with issues of segregation—performance, segregation, and the present vestiges within the City of Saint Louis.

Q. Exclusively within the City?

A.I don't have any information as to whether or nor it was intended to be exclusive. But my understanding is that the major emphasis here is that of resolving problems of segregation within the City of Saint Louis.

Q. To your knowledge, does the City Board make any attempt to acquaint the citizens of the City of Saint Louis in advance with the possible magnitude of the cost of this settlement agreement?

A. My recollection is that there were a number of meetings in which this issue was discussed. The press has reported on it widely, and there were opportunities for the public to get information regarding these events.

Q. Doctor, I believe you testified that the cost estimates for the settlement agreement, and particularly—let's refer to what I will call the appendix—those costs are separate and apart from the costs of the intracity plan; is that correct?

A. Yes.

Q. So you would contemplate the continuance of the intracity plan even if this settlement agreement is approved?

A. These proposals are beyond the present level of activities which are in the City of Saint Louis.

[1-156] Q. I realize that. But would you expect that the present level of activity—are you familiar with the present intracity plan?

A. Yes.

Q. Would you expect that to continue after approval of this settlement agreement?

A. Yes.

Q. And would you expect that to be funded by order of court after the approval of this settlement agreement?

A. There are areas which will eventually result in reconciliation. For instance, the costs involved in magnet schools are only for the expansion of the magnet school operation, and only to that extent would there be additional costs.

So in point, what I'm saying is: for instance, if, in fact, a substantial number of students do enter Saint Louis to participate in the magnet school programs, only the additional costs beyond those enrollments which are presently experienced by Saint Louis would be attributable as new costs.

This would not be a duplication of that which exists presently.

* * *

[71] Direct Examination

By Mr. Dierker:

Q. Would you state your name, please?

A. Lowell Jackson.

Q. And where do you reside?

A. City of Saint Louis.

Q. And what is your occupation?

A. Deputy tax assessor.

Q. And what does that entail?

A. That entails the day-by-day supervision of the assessor's office under the direction of the assessor.

Q. How long have you been with the assessor's office at the City?

A. Thirty-three years.

[72] Q. And what have you done in the course of those 33 years?

A. I've done just about every appraisal type of work within the office—

Q. With respect to the assessor's office, excuse me.

A. Within the assessor's office, yes. I've been an appraiser, a supervisor, assistant assessor.

Q. Okay. And essentially, could you describe briefly what the Office of the Assessor does?

A. The assessor's office is charged with the appraisal for assessment purposes of all real and personal property within the City of Saint Louis.

Q. And does the assessor also have any dealings with tax bills?

A. Yes. The assessor's office is charged with the preparation of tax bills.

Q. And do those tax bills include only taxes payable to the City of Saint Louis?

A. They pertain to all the taxing entities that are within the City, such as the schools, Metropolitan Sewer, and State.

* * *

[90] Direct Examination

By Mr. Dierker:

Q. Would you state your name, please?

A. George Otte.

Q. And what is your occupation?

A. Professor of urban affairs at Saint Louis University.

Q. And do you reside in the City?

A. Yes, I do.

Q. And have you been a candidate for any public office?

A. I was a candidate for the recent City School Board election.

* * *

[94] Q. I mean, when you studied the City's fiscal affairs, what have you looked at?

A. Well, basically, you could divide it into two areas, what you could call the City's own source revenue or its own budget which it has full control over and which there are only limitations as imposed by State statute or City charter. And then another area which consists of, of Federal grants, some State grants, which are limited in terms of what the City may do with the funds, and usually go through a separate budget process. And I tend to separate those two mainly because of the procedural matters involved.

Q. In the course of your studies, have you had occasion to become familiar with the tax structure subsisting in the City of Saint Louis?

A. Yes, I have.

Q. Does that include the property tax?

A. Yes.

Q. Now, Doctor, you've stated that you've reviewed the settlement agreement, and the financing provisions in particular. Based on your review of those provisions and the other documents that you've identified, as well as your own studies, do you have an opinion concerning whether the financing provisions of the proposed settlement agreement would be—what, if any, effect those provisions would have upon the City of Saint Louis if they were implemented?

[95] A. I think they would be largely harmful to the City of Saint Louis in large measure because it would be imposing an additional tax on the City without a concomitant rise in revenue for the City, and recent studies that tend to be of a broad, what we call aggregate nature, indicate that higher taxes tend to have a negative effect on governmental jurisdictions. In other words, higher taxes tend not to promote economic growth, do not tend to promote a vital community; and as a matter of fact, in reviewing some material before I came here, I was reading what the commission on New York City's bankruptcy had to say and they, again, and have verified what we are realizing now, that higher taxes tend to be counterproductive in many respects, and recommended a lowering of taxes in New York City as a means of preventing further business migration and population migration.

Q. Okay, now your opinion with regard to these effects is based on the settlement agreement proposal as written, which contemplates a court-ordered tax increase, property tax increase; is that correct?

A. Right.

* * *

[99] Q. Doctor, with respect to the funding provisions of the settlement agreement, they do not specify what amount of court-ordered property tax would be required. Do you have an opinion on whether any amount of court-ordered property tax increase would have an effect upon the citizens of the City?

Mr. Gianoulakis: Again, I object by "any amount." Mr. Dierker, do you mean one cent?

Mr. Dierker: By "any amount," I mean any amount, Your Honor, whether one cent or a million dollars.

The Court: The question, I think, is clear; objection is overruled.

The Witness: It would appear to me that you'd tend to have some type of scale. I think the higher the amount, the greater the potential for ill effects on City revenue, City population, the things we were just talking about, the abandoned property, and possibly the smaller the amount, possibly the lesser the impact.

[100] Q. (By Mr. Dierker) Doctor, if the tax rates in the City instead of being increased were simply to be held constant while tax rates in the County went down, do you have an opinion as to what, if any, effect that would have on the citizens of the City?

A. Well, it's basically attaining the same result with a little different mechanism. Instead of increasing the taxes in the City, you'd be effectively keeping those constant, decreasing the County. And there's the same potential for what you might call revenue impacts in the City if, for no other reason—and then Saint Louis County becomes much more attractive either for housing, for investment, for a variety of things than Saint Louis City might.

* * *

[105] Redirect Examination

By Mr. Dierker:

Q. Doctor, assuming that tax—property tax in the City of Saint Louis were increased by order of court in any amount, in your opinion, would that have an effect on the City's ability to raise revenue, new revenue?

A. I would think so, especially in light of the Hancock Amendment and in light of, well, the City is well now at it's legal limits in almost all of it's taxing sources, that it would require a vote of the people. And I would not envision the voters being very receptive to an additional tax increase having just had one, possibly, imposed on them themselves. If we've learned anything in the past few years about taxes and voting, it's that people tend to be not too receptive to higher taxes. That's what Proposition-13 told us **[106]** in California, Proposition-2 ½ in Boston, and the Hancock Amendment. And I think maybe they're giving us a sign.

* * *

[4] Direct Examination

By Mr. Dierker:

Q. Would you state your name, please?

A. My name is Stephen Mullin.

Q. Where are you employed?

A. I'm employed by the City of Saint Louis.

Q. And in what capacity?

A. I'm the City's budget director

Q. And how long have you been the City's budget director?

A. Three weeks.

Q. And prior to—

The Court: We like to get them when they're fresh.

Q. (By Mr. Dierker) Immediately prior to becoming the City's budget director, what was your employment?

[5] A. I worked since August as a financial consultant to the Mayor.

Q. What is your academic background, sir?

A. I have a Bachelor's degree from Harvard University in economics and I have a Master's degree from the University of Pennsylvania in economics with a specialty in public finance, and education finance, and health care finance and labor economics. And I am currently finishing my dissertation for a Ph.D. in economics at the University of Pennsylvania.

Q. Have you had occasion to study public finance, particularly school finance, other than as a student?

A. Yes. I worked with the State School Advisory Panel, State of Connecticut on their school finance Constitutional case in 1977, '78 and '79, and I worked with an expert witness for the State of—as an associate to an expert witness for the State of Maryland in 1980 for their State Constitutional school finance case.

Q. And did the Maryland litigation involve the challenge to the system of school finance in the State of Maryland?

A. Both the Connecticut case and the Maryland case did, yes.

Q. You did not, however, testify in either of those?

A. I did not.

Q. What are your duties as budget director of the City?

A. To develop a budget and present the budget to the Board of Estimate and Apportionment at 1:30 today and to develop

revenue projections for the City to monitor the expenditures and revenues [8] and the public utilities divisions of the City.

Q. Now, direct your attention to Exhibit C; can you see it sitting against the wall over there?

A. Yes, sir.

Q. Have you had occasion to view that exhibit previously?

A. Yes, I have.

Q. If increases in the property tax levy occurred at any of the levels identified on Exhibit C—

* * *

Q. (By Mr. Dierker) What, if any, effect on the City's ability to obtain new revenue would there be if there were tax levy increases in any of the ranges shown on Exhibit C?

A. I believe there would be two effects. One is the likelihood if any of these tax rate increases are put through, I believe there will be a decrease, a significant decrease in the likelihood of voter approval of any other fee increases—fee or tax increases that would be put on the ballot in future years. [9] Second, I suspect there would be an effect on the growth of our current sources of revenue given the present tax rate or fee rates. In other words, the tax basis would not grow or might even shrink.

Q. Have you had occasion to study the effect of relative property tax rates on the decisions of businesses concerning their locations?

A. Yes, I have.

Q. On what occasion?

A. First in study—in public finance study, and second, as a research associate for the Governor's Tax Commission for tax reform in the State of Pennsylvania; I was a member of the Philadelphia area task force.

Q. What effect, if any, do relative property tax rates have on decisions of businesses concerning their locations?

A. Businesses, there tends to be a widely viewed, widely accepted position that there is little or no effect on business location; however, when that is broken down, it seems that evidence suggests more. So there is little or no effect when a business is trying to decide on a location among regions; but once within a region or once within a specific, for example, S.M.S.A., the local tax rates and, basically, the services of different jurisdictions within the S.M.S.A. provide, become very important factors for business location.

Q. In general, is the property tax an ideal mechanism to fund **[10]** school district operations?

A. I would say, as my opinion on this and my feeling on this is that the property tax per se is not an evil tax. There is a newer—there is a new train of thinking in the literature that suggests the property tax itself is not an unjust and not an unfair inequitable tax or regressive tax; however, that supposes, and it's cautioned in the literature, that's cautioned, that suggests, that presupposes fair administration and fair assessment which is not exactly the case in many or any jurisdictions in the country. I think the major source is—the major problem with calling it an ideal tax is that as long as—if there's any form of tax that will exacerbate current disparities among jurisdictions within the same region, within the same S.M.S.A., that there will be efficiency problems and there will be equity problems involved with increases in the tax.

Q. In the property tax?

A. In the property tax, yes.

Q. Do you have an opinion as to what, if any, effect on the City there would be if a tax were imposed only in the City for the purposes of funding the proposed settlement agreement in this case?

A. For efficiency purposes—well, from the City's point of view, it would be very, very tough, clearly. The City would be forced to have severely limited ability to raise new taxes, as I mentioned earlier, for strict, what I would consider efficiency [11] terms, tax levied in the City alone, as I mentioned earlier, would exacerbate existing disparities among jurisdictions in the Saint Louis area and, hence, cause further locational and business investment decisions and inequities.

As far as the inequity side of the tax, I would not be convinced that any form of ability to pay principal in measuring equity would support a tax levy—increase in the property tax levied only in the City.

Q. Why is that, with respect to the equity?

A. Well, the ability to pay principal suggests that the incidents or burden of taxation ought to fall more heavily on either wealthier people or wealthier jurisdictions, and this would clearly not be the case.

* * *

CITY OF ST. LOUIS ASSESSED VALUE FOR 1983

REAL PROPERTY	$1,111,000,000
PERSONAL PROPERTY	325,000,000
MERCHANTS & MANUFACTURES INVENTORY	294,000,000
TOTAL	$1,730,000,000

AMOUNT OF REVENUE NEEDED	$100,000,000	$75,000,000	$50,000,000	$25,000,000
ADDITIONAL RATE NEEDED	$5.78	$4.34	$2.89	$1.45

ASSESSED VALUE	TAX BILL INCREASE TO PROVIDE ADDITIONAL REVENUE			
$100,000	$5780	$4340	$2890	$1450
$50,000	$2890	$2170	$1445	$725
$25,000	$1445	$1085	$722	$362
$15,000	$867	$651	$433	$218
$10,000	$578	$434	$289	$145
$5000	$289	$217	$145	$73

SAINT LOUIS PUBLIC SCHOOLS

BUDGET OFFICE

March 23, 1983

MEMORANDUM

To: Jerome B. Jones, Superintendent of Schools
Louis H. Ratz, Jr., Deputy Superintendent/Management
Ronald Stodghill, Deputy Superintendent/Instruction

For your information and review we have prepared and enclose your personal copies of the "New Voluntary Desegregation Plan" budget for FY1983-1984 through FY1987-1988.

Each budget document consists of two parts; Part A delineates the financial resources and Part B the human resources that will be required to support the New Voluntary Desegregation Plan.

It is our understanding that these resource requirements are in addition to the Desegregation Plan Budgets for FY1983-1984 as published on January 7, 1983, and amended January 31, 1983.

Although the enclosed budget documents are for Internal Discussion Only and subject to further verification and reconciliation, in our opinion they fairly represent all budget amendments submitted to this office as of the close of day March 22, 1983.

Respectfully submitted,

Robert H. Heet

ROBERT H. HEET
Director of Budgets

RHH:cb

Enclosures

cc: Glenn A. Campbell ✓
Joseph W. Schwarzbauer
John E. Engel

911 Locust Street • St. Louis, Missouri 63101 • Area Code (314) 231-3720

EDITOR'S NOTE

PAGES A162 through A 169 WERE POOR HARD COPY AT THE TIME OF FILMLNG. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ST. LOUIS PUBLIC SCHOOLS
BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
A. IMPROVEMENT OF QUALITY EDUCATION THROUGHOUT THE SYSTEM						
	INSTRUCTION					
IMPLEMENT FIVE YEAR CURRICULUM IMPROVEMENT						
A.1.01	INSTR PLAN & PROG DEVEL ADM	397,441	401,021	404,602	411,763	415,344
A.1.01	INSTR PLAN & PROG DEVEL	606,374	0.00	0.00	0.00	0.00
	5-YEAR IMPROVE PLAN TOTALS	$1,003,515	$401,021	$404,602	$411,763	$415,344
A.1.01.01	PRE-SCHOOL CENTERS	195,155	953,242	1,304,471	1,329,989	1,727,454
A.1.01.02	KINDERGARTEN	405,[illegible]	5,543,[illegible]	5,602,119	6,748,912	5,777,339
A.1.01.03	INSTR PLAN & PROG DEVEL ADM	0.00	7,327	13,631	0.00	0.00
IMPROVEMENT OF MATHEMATICS EDUCATION IN THE ST. LOUIS PUBLIC SCHOOLS K-8						
A.1.01.04	ELEMENTARY SCIENCE K-8	5,481,[illegible]74	4,933,142	4,982,233	5,077,[illegible]53	5,[illegible]14,501
A.1.01.04	ELEMENTARY MATH K-8	1,740,[illegible]81	1,[illegible]12,800	1,193,361	1,802,993	1,[illegible]46,[illegible]05
	IMP MATH ED TOTALS	$7,221,955	$6,120,942	$6,175,594	$6,880,076	$6,160,506
A.1.01.05	INSTR PROG PLAN DEV ADM	6,327	195,765	197,452	200,947	202,694
A.1.01.06	SCIENCE ENRICHMENT PROJ	199,735	308,997	414,129	418,137	421,773
A.1.01.07	INSTR PLAN & PROG DEV ADM	0.00	161,429	162,861	165,742	167,185
EXPAND RANGE OF OPPORTUNITIES & ACCESS TO COOPERATIVE EDUCATION & WORK STUDY PROGRAMS						
A.1.01.08	VOC ED ADMINISTRATION	62,529	59,117	59,644	60,700	61,228
A.1.01.08	VOC SCH WORK STUDY ADM	65,276	64,430	65,006	66,156	66,731
A.1.01.08	VOCATIONAL SCHOOL WORK STUDY	1,725,096	1,797,534	1,890,212	2,001,770	2,097,128
A.1.01.08	OCC HOME ECONOMICS	240,398	251,286	253,530	258,017	260,261
A.1.01.08	BUSINESS EDUCATION	193,316	106,353	107,303	109,202	110,151
A.1.01.08	DISTRIBUTIVE EDUCATION	40,691	39,322	39,673	40,548	41,779
	EXPAND COOP ED/WK STDY TOTALS	$2,647,306	$2,318,042	$2,415,368	$2,536,393	$2,637,269

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
SUMMER SCHOOL PROGRAMS						
A.1.01.09	SUMMER SCHOOL PROG	71,227	71,868	72,510	73,793	74,435
UPGRADE THE QUALITY OF SERVICES FOR HANDICAPPED STUDENTS						
A.1.01.10	SPECIAL EDUCATION ADMIN	2,697,837	1,504,142	1,076,872	1,661,431	1,024,261
A.1.01.10	PYSCHOLOGISTS	861,927	869,692	877,457	892,987	990,752
A.1.01.10	BEHAVIOR DISORDERS	1,483,553	1,661,930	1,712,837	1,565,571	1,578,510
A.1.01.10	LEARNING DISABILITIES	2,140,479	2,408,395	2,415,895	1,949,193	1,825,878
A.1.01.10	MENTALLY RETARDED	3,525,719	8,159,645	7,142,415	5,614,319	5,163,726
A.1.01.10	INTINERANT/RESOURCE TEACHERS	512,412	674,737	586,646	599,329	671,270
A.1.01.10	SPEECH CORRECTION	922,219	1,198,596	1,175,678	960,616	911,672
A.1.01.10	SIGHT CONSERVATION	139,639	215,747	284,806	289,929	292,450
A.1.01.10	EARLY CHILDHOOD PROGRAM	2,467,721	2,642,730	2,797,354	2,835,365	2,860,020
A.1.01.10	HEARING IMPAIRED	3,324,899	892,787	985,407	957,998	1,257,693
A.1.01.10	DELINQUENT TEACHING	339,574	334,625	315,352	340,713	313,676
A.1.01.10	ORTHOPEDICS TEACHING	6,431,891	542,259	442,815	449,923	454,904
A.1.01.10	ATTENDENCE WELFARE	404,783	409,430	413,976	417,379	423,016
A.1.01.10	HEALTH PROFESSIONALS	424,855	428,482	432,250	437,847	441,673
	HANDICAPPED STUDENTS TOTALS	$24,866,496	$22,133,506	$20,675,135	$18,374,629	$17,948,901
A.1.01.11.01	AFTERSCHOOL PROGRAMS-S	1,314,268	2,332,514	2,393,157	2,332,014	2,230,692
A.1.01.11.02	DEPUTY SUPT/INSTRUCTION	599,402	1,439,144	1,649,562	1,669,598	1,606,436
A.1.01.12	MS FOR STUDENT DISCIPLINE	351,489	1,216,542	1,618,472	1,642,692	1,640,195
RESTORE ART, MUSIC & PHYSICAL EDUCATION AT ALL LEVELS OF INSTRUCTION						
A.1.01.13	ELEMENTARY INSTR MUSIC	2,672,502	970,450	950,762	967,589	976,093
A.1.01.13	ELEMENTARY VOCAL MUSIC	2,134,299	2,344,076	2,365,905	2,406,864	2,427,793
A.1.01.13	ELEMENTARY PHYSICAL ED	2,179,196	2,115,493	2,127,262	2,164,913	2,183,738
A.1.01.13	ELEMENTARY ART	1,935,826	2,145,942	2,165,102	2,203,423	2,222,593
	ART,MUSIC,PHYS. ED TOTALS	$8,921,823	$7,575,971	$7,608,131	$7,742,789	$7,810,117

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DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
EXPAND & IMPROVE EXTRA-CURRICULAR ACTIVITIES						
A.1.01.14	ATHLETIC ADMINISTRATION	16,794	20,001	20,260	20,619	20,798
A.1.01.14	INTERSCHOLASTIC COMPETITION	415,286	952,992	1,043,666	1,062,138	1,071,374
	EXTRA-CURRICULAR TOTALS	$432,080	$973,073	$1,063,926	$1,082,757	$1,092,172
A.1.02.01	STUDENT LEADERSHIP	97,950	79,503	78,518	79,908	64,784
A1.02.02.01	ORAL COMMUNICATION PROGRAM	167,998	169,511	171,025	174,052	175,565
A1.02.02.02	CITIZENSHIP FOR PRIMARY GRADES	119,394	133,954	135,150	137,542	138,738
A1.02.02.03	BASIC SKILLS	122,698	132,852	134,038	136,410	138,838
A.1.02.03	ENGLISH AS A SECOND LANGUAGE	367,916	426,534	464,411	506,263	553,979
A.1.02.03	HONORS ART	120,696	120,954	120,198	122,325	123,389
A.1.02.05	HONORS MUSIC	481,774	376,413	367,570	328,075	330,928
A.1.02.01	COLLEGE PREPARATORY PROGRAM	119,902	730,701	1,256,862	1,762,477	2,265,557
A.1.02.07	MASS MEDIA SEC PROGRAM	344,654	375,263	402,694	382,909	356,129
A.1.02.01	PAIRING & SHARING	170,914	172,413	182,451	195,152	206,578
A.1.02.02	PARTNERSHIP PROGRAM	331,093	440,779	517,253	563,180	544,337
A.1.02.02	SPRINGBOARD TO LEARNING	73,941	123,702	221,641	225,563	230,416
A.1.02.04	CAREER EDUCATION	295,571	398,267	399,232	398,121	399,544
UPGRADE LIBRARY/MEDIA SERVICES						
A.1.04	LIBRARY RESOURCE CENTER	1,527,737	1,116,630	1,105,692	1,119,512	1,129,247
A.1.04	ELEMENTARY LIBRARY SERVICES	3,721,949	6,440,225	6,325,977	5,853,741	5,904,643
A.1.04	SECONDARY LIBRARY SERVICES	1,470,656	2,695,876	2,426,914	2,469,869	2,491,346
	LIBRARY SERV TOTALS	$6,716,028	$10,252,791	$9,858,583	$9,443,122	$9,525,236
A.1.04.01	DATA MANAGEMENT SERVICES	118,355	119,422	230,098	119,170	120,207
AUDIO VISUAL SERVICES						
A.1.04.02	AUDIO-VISUAL ADMINISTRATION	72,219	72,870	73,520	74,822	75,472
A.1.04.02	AUDIO-VISUAL SERVICES OTHER	265,372	207,283	219,304	320,453	288,439
A.1.04.02	AUDIO-VISUAL SVCS-PHOTOGRAPHER	21,223	21,415	21,696	21,988	22,179
	AUDIO VISUAL TOTALS	$358,814	$301,568	$314,430	$417,263	$386,090

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KSLH; CABLE TV						
A.1.04.03	RADIO STATION KSLH	148,388	399,759	209,396	233,872	289,266
A.1.04.03	CABLE TV PLAN COMM	43,901	195,639	161,364	200,038	291,813
	KSLH/CABLE TV TOTALS	$192,289	$595,389	$370,760	$433,910	$581,079
A.1.04.04	DATA MANAGEMENT	3,241,032	3,084,758	8,145,886	531,011	535,628
LOWER PUPIL-TEACHER RATIOS TO COUNTY AVERAGE						
A.1.05	KINDERGARTEN	500,779	505,291	509,802	518,825	523,337
A.1.05	ELEMENTARY GENERAL INSTR 1-5	6,095,393	8,843,254	8,922,213	9,080,129	9,159,086
A.1.05	MIDDLE GENERAL INSTRUCTION	1,745,786	3,755,928	3,789,463	3,856,533	3,890,068
A.1.05	SECONDARY GENERAL INSTRUCTION	2,835,702	7,106,971	7,170,426	7,297,336	7,360,791
	LOWER PTR TOTALS	$11,141,664	$20,211,446	$20,391,904	$20,752,823	$20,933,282
	INSTRUCTION TOTALS	$73,255,448	$91,481,834	$96,514,222	88,359,335	$88,948,793
	INSTRUCTIONAL SUPPORT					
RESTORE STAFF DEVELOPMENT UNIT, INCLUDING PROVISION OF OPPORTUNITIES FOR STAFF TO KEEP ABREAST IN THEIR FIELD						
A.2.01	STAFF DEVELOPMENT-ADM	176,441	178,031	179,621	182,800	184,389
A.2.01	STAFF DEVELOPMENT	974,339	976,397	985,115	1,002,550	1,011,268
	STAFF DEVELOP UNIT TOTALS	$1,150,780	$1,154,428	$1,164,736	$1,185,350	$1,195,657

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A.2.01.01	PROJECT SHAL	789,348	1,656,950	1,545,421	1,782,923	1,285,802
A.2.02	FOOD SERVICE	832,500	840,000	847,500	862,500	870,000
A.2.03.01	ELEMENTARY SECURITY GUARD SERVICE	421,158	594,086	600,746	617,761	616,695
A.2.03.02	SEC SECURITY GUARD SERVICE	1,021,233	965,246	976,350	1,005,332	1,002,271
A.2.03.03	SCHOOL CROSSING GUARDS	563,089	559,258	564,251	574,238	579,231
A.2.03.04	SPECIAL SERVICES ADMINISTRATION	26,731	25,796	26,027	26,487	26,718
A.2.04	PARENTAL INVOLVEMENT	630,276	602,467	607,846	618,604	623,983
	INSTRUCTIONAL SUPPORT TOTALS	$5,626,115	$6,398,231	$6,332,877	6,672,295	$6,200,357
	MANAGEMENT SUPPORT					
A.3.01	PUBLIC AFFAIRS	421,029	704,382	739,649	819,375	928,930
A.3.02	LONG RANGE PLANNING	413,754	316,692	317,509	335,134	327,692
A.3.03	DESEG PLANNING/MONITORING OFC	43,917	43,753	44,143	44,924	45,315
PURCHASING,	WAREHOUSE, PICK-UP & DELIVERY (BOARD-OWNED VEHICLES)					
A.3.04.01	WAREHOUSE PRINTED FORMS	5,550	5,600	5,650	5,750	5,800
A.3.04.01	PURCHASING OFFICE	104,107	107,062	108,018	109,930	110,886
A.3.04.01	TRANS PICKUP & DELIVERY	201,974	203,794	205,614	209,255	211,075
A.3.04.01	WAREHOUSE OPERATIONS	52,030	52,499	52,969	53,908	54,378
A.3.04.01	WAREHOUSE OPERATIONS EQUIP	1,999	1,680	1,695	1,726	1,710
A.3.04.01	DESEG MOVING OPERATIONS	58,435	58,961	59,487	60,540	61,067
A.3.04.01	TRANSPORTATION EQUIPMENT	33,790	34,094	34,399	35,009	35,312
	PURCHASE,WAREHOUSE,ETC. TOTALS	$467,876	$463,690	$467,831	$476,110	$480,251
A.3.05.01	PERSONNEL ADMINISTRATION	$2,965	$1,191	60,607	$1,681	$2,216
	MANAGEMENT SUPPORT TOTALS	$1,409,441	$1,589,698	$1,631,739	1,727,254	$1,744,594

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DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
	FACILITIES COMPONENTS					
RESOURCES TO CARRY OUT FIRST 5 YEARS PROGRAM FOR DEFERRED MAINTENANCE, RENOVATION, MODERIZATION & IMPROVEMENTS						
A.4.02	WAREHOUSE & RAW MAT STK	236,208	238,336	222,384	226,320	228,288
A.4.02	ARCHITECT & ENGINEERING	335,984	652,947	856,527	952,187	1,122,864
A.4.02	ADM SUPPORT SVCS ADM	40,381	78,798	90,881	97,008	107,132
A.4.02	CENTRAL DUPLICATING OFFICE	148,671	149,485	150,739	153,407	154,741
A.4.02	PLANT OPER CUST SERVICE	191,979	193,769	195,438	198,898	200,626
A.4.02	MAINT GENERAL ADMIN	20,699	20,886	21,072	21,445	21,632
A.4.02	MAINT OF GRNDS	179,485	201,833	203,635	185,953	187,570
A.4.02	MAINT ALL BLDGS & EQUIP	6,497,829	11,036,368	13,782,102	15,176,033	17,401,997
A.4.02	MAINT SHOPS EQUIPMENT	77,256	77,952	78,645	80,040	80,736
	UPDATE SCHOOLS TOTALS	$7,727,892	$12,650,234	$15,601,343	$17,091,291	$19,505,580
FACILITIES RELATED NEEDS IDENTIFIED IN VARIOUS COMPONENTS WHICH HAVE NOT BEEN PROVIDED FOR ON SECTION 4.02						
A.4.03	ARCHITECT & ENGINEERING-2	97,347	82,656	93,677	66,375	60,900
A.4.03	PLANT OPERATION CUST SVCS-2	51,674	52,139	52,605	53,536	54,002
A.4.03	UTILITIES-ELECTRIC	17,205	17,[illegible]	17,515	17,825	17,980
A.4.03	UTILITIES-WATER	222	[illegible]	226	230	232
A.4.03	UTILITIES-SEWER	167	[illegible]	170	173	174
A.4.03	UTILITIES-TELEPHONE	22,200	22,400	22,600	23,000	23,200
A.4.03	UTILITIES-HEAT	16,650	16,800	16,950	17,250	17,400
A.4.03	MAINT OF GROUNDS-2	1,187	1,198	1,208	1,230	1,240
A.4.03	MAINT OF ALL BLDGS-2	1,944,729	1,803,627	1,400,831	927,530	935,595
	RELATED FACILITIES TOTALS	$2,151,372	$1,996,572	$1,605,782	$1,101,149	$1,110,723
ADDITIONAL FACILITIES NEEDS IN NON-INTEGRATED SCHOOLS WHIC ARE BEYOND THE SCOPE OF WORK IDENTIFIED IN 4.02 & 4.03						
A.4.04	ACHITECTURE & ENGINEERING-4	0.00	0.00	433,920	151,800	0.00
A.4.04	PLANT OPER CUST SVCS-3	0.00	0.00	0.00	63,213	95,154
A.4.04	MAINT BLDGS & EQUIP-3	0.00	0.00	6,198,050	2,156,250	0.00
A.4.04	PROP INVEST & APPRAISALS	0.00	453,600	0.00	0.00	0.00
	FACILITIES RENOVATIONS TOTALS	$0	$453,600	$6,631,970	$2,371,263	$95,154

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	FACILITY COMPONENTS TOTALS	$9,879,264	$15,100,406	$23,839,095	20,563,783	$20,711,465
B. SPECIAL PROVISIONS FOR SCHOOLS WHICH REMAIN NON-INTEGRATED						
B.1.01	DEPUTY SUPT/INSTRUCTION	8,576,095	10,980,833	11,078,877	11,274,963	11,373,006
B.2.01.01	GENERAL INSTRUCTION ELEMENTARY	3,739,878	3,773,571	3,807,263	3,874,649	3,908,341
AFTER SCHOOL PROGRAMS OF REMEDIAL & ENRICHING NATURE						
B.2.01.02	AFTER SCHOOL PROGRAMS-3	268,125	543,073	799,756	812,991	820,061
B.2.01.02	AFTER SCHOOL PROGRAMS	475,505	479,789	484,072	492,640	496,924
	AFTER SCHOOL PROG TOTALS	$743,630	$1,022,862	$1,283,828	$1,305,631	$1,316,985
B.2.01.03	SATURDAY CLASSES L.I.F.T.	299,591	301,234	302,935	306,142	303,741
B.2.01.04	SUMMER SCHOOL PROGRAM-2	330,843	658,197	975,678	992,968	1,001,603
B.2.01.05	SHARED MOTIVATIONAL EXP	136,105	137,331	138,557	141,009	142,235
B.2.01.06	DEPUTY SUPT INSTRUCTION-3	955,062	1,377,423	1,595,544	2,040,775	3,337,612
B.2.01.07	STUDENT ACADEMY CENTERS	998,994	1,704,685	1,588,739	1,511,354	1,538,519
B.2.01.08	LEADERSHIP SKILLS TRAINING	153,377	139,079	96,250	97,954	98,806
B.2.01.09	DEPUTY SUPT/INSTRUCTION	369,669	383,109	365,221	371,685	374,917
B.2.01.10	P.A.S.S. PROGRAM	293,145	299,267	301,939	307,283	309,955
B.2.01.11	PARENTAL INVOLVEMENT	430,551	1,225,915	2,042,639	2,859,431	2,903,359
B.2.01.12	PEER TUTORING	142,002	196,715	201,198	178,122	179,091
B.2.01.14	CURRICULUM DEVELOPMENT	241,020	292,287	291,934	295,598	297,295
	NON-INTEGRATED SCHOOLS TOTALS	$17,161,768	$22,377,960	$23,970,892	25,502,524	$26,995,484

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C. VOLUNTARY PLAN COMPONENTS - MAGNET SCHOOLS AND SUPPORT PROGRAMS						
EXISTING & PROPOSED MAGNET SCHOOLS						
C.S.01	MATH-SCIENCE & TECHNOLOGY	0.00	965,440	4,036,479	4,081,471	4,116,962
C.S.02	ACADEMY OF BASIC INSTRUCTION I	1,469,333	1,491,362	1,504,677	1,531,309	1,544,625
C.S.03	INDIVIDUALLY GUIDED EDUCATION-II	954,741	2,196,652	2,182,204	2,220,327	2,240,139
C.S.04	INVESTIGATIVE LEARNING MIDDLE	1,829,039	1,853,288	1,874,880	1,998,963	1,924,654
C.S.05	FOREIGN LANGUAGE EXPERIENCE HS	283,555	286,109	288,664	293,773	296,328
C.S.06	VISUAL & PERF ARTS MIDDLE I	1,855,249	1,882,983	1,899,796	1,933,420	1,950,233
C.S.07	FOREIGN LANGUAGE EXP SCH II	360,750	1,359,585	1,340,044	1,363,761	1,375,620
C.S.08	INDIVIDUALLY GUIDED ED MIDDLE	639,250	2,960,220	2,955,010	3,007,311	3,021,044
C.S.09	MILITARY ACADEMY MIDDLE	207,570	2,372,973	2,368,170	2,410,985	2,431,012
C.S.10	MONTESSORI II	395,290	1,952,563	1,941,746	1,976,114	1,993,297
C.S.11	NAVAL JR ROTC	1,065,600	6,160,782	6,153,639	6,262,553	6,317,010
C.S.12	VISUAL & PERF ARTS MID-II	113,220	1,905,159	1,899,570	1,933,469	1,950,091
C.S.13	VISUAL & PERF ARTS HS	1,743,900	5,189,820	5,185,156	5,294,627	5,349,363
C.8.01	CURRICULUM DEVELOPMENT	591,459	509,359	679,039	331,978	294,758
C.8.02	ETHNIC HERITAGE	185,015	230,709	275,704	344,353	781,676
C.8.03	RECRUITMENT & COUNSELING	292,125	292,[illegible]	316,980	323,740	326,555
	MAGNET SCHOOL TOTALS	$11,678,216	$32,587,520	$35,960,758	36,186,589	$36,513,277
	ANNUAL TOTALS	$119,010,252	$169,535,649	$188,189,583	$179,011,691	$181,113,970
	FIVE YEAR TOTAL			$836,861,145		

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QUESTION #3

TOTAL ACTUAL REVENUES OF THE ST. LOUIS PUBLIC SCHOOLS

Source	1977-78	1978-79	1979-80	1981-82	1982-83
Local	$ 60,422,553	$ 62,822,530	$ 68,987,516	$ 66,470,242	$ 67,151,078
County	3,115,585	3,157,507	3,205,319	3,237,881	3,275,765
State	50,414,801	57,123,728	62,899,080	78,554,517	79,944,011
Federal	32,193,639	29,670,480	31,694,985	35,024,064	34,176,913
Total	$146,146,598	$152,774,245	$166,786,900	$183,286,704	$184,547,767

*FD/5 - State Report

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

vs.

The Board of Education of The City of St. Louis, Missouri, et al.,
Defendants.

CITY BOARD'S REPORT PURSUANT TO ORDER [H(2503)83]

Pursuant to paragraph 6(a) of this Court's Order dated July 5, 1983 [H(2503)83] the City Board hereby certifies that it needs $13,480,593.50 to meet its share of the reasonable actual costs of implementing programs pusuant to the Settlement Plan in the 1983-1984 fiscal year. The tax rate necessary to fund the above amount is 86¢ in addition to the present operating levy of $3.48 which has not been reduced as required by paragraph 6(d) of the July 5, 1983 Order or a total operating levy of $4.34 for the 1983-1984 fiscal year.

Pursuant to [H(2503)83], Memorandum at 27, the City Board staff has reviewed, analyzed and set priorities for program implementation within the context of the time available to perform pre-implementation tasks, the complexities of implementation, and the projected space available in schools to accommodate such programs in 1983-84. The above amount is based on that review and analysis. Programs which have not been included for

implementation in 1983-1984 remain under consideration and study for implementation at a later time.

The $13,480,539.50 and 86¢ were calculated in the following manner:

-Total 1983-1984 implementation costs (reduced from $86,340,232.08 estimate in Exhibit 3).	$ 56,457,392.00
-Less costs of implementing programs under paragraphs 5(a) and 5(b) of the July 5, 1983 Order to be paid in full by State.	16,235,461.00
-Amount of implementation costs to be funded fifty percent by City Board and fifty percent by State.	40,221,931.00
-Amount to be funded by City Board.	20,110,965.50
-Less projected additional revenue by operation of paragraph 6(d) of the July 5, 1983 Order.	6,630,372.00
-Balance necessary to fund City Board's share of costs for 1983-84 fiscal year.	13,480,593.50

It is estimated that 1 cent per $100 assessed valuation will yield $157,866.00. Thus $13,480,593.50 ÷ $157,866 = .8539 or 86¢.

A. **THE $16,235,461 AMOUNT INCLUDES:**

1. **Costs of Implementing the Following Magnet Schools and Programs[1] Pursuant to Paragraph 5(a) of the July 5, 1983 Order**

Academy of Basic Instruction (Lyon)
Individually Guided Education (Woerner)
Investigative Learning Center (Mason)
Visual and Performing Arts (Marquette)
Foreign Lanugage (Roosevelt)

2. **Magnet Schools Scheduled for Operation in 1984-85 for Which Building Preparation Costs Must be Received in 1983-84**

Foreign Language Experience School II
Montessori II
Visual and Performing Arts Middle (Replication)
Individually Guided Education Middle School
Military Academy Middle School
Visual and Performing Arts High School - (Relocate to larger facility)
Naval Jr. ROTC (Relocate to larger facility)

3. **Costs of Implementing the Part-time Educational Programs as Identified in Section V of Settlement Plan, as Approved, and in Section B of its Appendix and of Exhibit 2 include costs for the following:**

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[1] The State elected to provide transportation under the Voluntary Plan to City students attending City Voluntary Plan Magnet schools and programs in 1982-83. Since it is a cost of implementing such magnet schools which it is obligated to pay in full, the State believed it could provide such transportation at less cost. During discussions pursuant to paragraph 11(c) of the July 5, 1983 Order, the State notified the City Board that it will not provide such transportation. Consequently, such costs had to be added to the budgets for such schools and programs in Section III of the Settlement Plan and in Section C of its Appendix and Exhibit 2.

A.5.01 Honors Art
A.5.02 Honors Music
A.6.01 Springboard to Learning
C.1.02
A.6.03 Pairing and Sharing
C.1.02
A.6.04 Partnership Program
C.1.02
C.1.02 City/County Career Education
C.1.02 Middle School Mass Media
C.1.02 Extended Day Program
C.1.02 City/County Consumer Education
B.1.02 Coordinating of Instructional Programs in Non-Integrated Schools[2]
B.2.01 After School Programs of Remedial and Enriching Nature
B.2.02 Saturday Classes
B.2.03 Summer Education Experience
B.2.04 Schools of Emphasis[3]
B.2.05 Parents as Teachers
B.2.06 Peering Tutoring
B.2.07 Motivational/Recognition Experience Program
B.2.08 Role Model Experiences
B.3.01 Parent and Staff Seminars
B.3.02 Student Concerns Committee (no budget request necessary)

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[2] This component provides for the assignment of instructional coordinators to non-integrated schools to ensure the coordination and articulation of part-time program activities with the instructional programs of the school.

[3] This component allows each non-integrated school to select specialty programs which will be specific to the needs of that school.

B. **THE $40,221,931.00 AMOUNT INCLUDES:**[4]

Costs of Implementing the Following Programs Pursuant to Paragraph 5(c) of the July 5, 1983 Order for 1983-1984 include:

A.1.01 Curriculum Development (Computer Literacy/Program)
A.1.02 Curriculum Supervision
A.2.01 Library/Media Services
A.2.02 Audio Visual Services
A.3.01 Lower Pupil Teacher Ratios
A.3.02 Restore Art, Music and Physical Education
A.3.03 Science Lab Teachers Middle Schools
A.3.04 Services to Handicapped Children
A.3.05 Nurses and Counselors
A.4.04 Full-Time Four Year Alternative High School
A.4.05 Tri-A Outreach
A.5.03 Extra-Curricular Athletic Activities
A.6.02 Science Enrichment Program
A.7.01 More Effective Schools
A.7.02 Staff Development
A.8.02 Security Guards (Elementary)
A.8.03 Security Guards (Secondary)
A.8.05 School-Parent-Community Relations

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[4] Included in the category of costs to be funded equally by the City Board and the State of Missouri are expenses related to maintenance mechanics work and contracted services to implement the portion of the facilities maintenance schedule as described in Section A of the Settlement Plan Appendix and in Exhibit 2. This work includes maintenance repairs and program related repairs and alterations necessary to meet obligations under the Settlement Plan as approved.

The costs herein do not include capital inprovement expenses. Such costs will be addressed in a Bond Issue Proposal pursuant to paragraph 5(d) of the July 5, 1983 Order. The distinction between capital improvements costs and the costs provided for herein is based upon the Model Building Code of the City of St. Louis and generally accepted appraisal practices related to this subject matter.

A.8.06 Public Affairs
A.8.07 Controller's Office
A.8.10 Insurance Administration - Safety of Buildings
A.8.11 Purchasing, Warehouse, Pickup and Delivery (Board Owned Vehicles)
A.8.13 Desegregation Planning and Monitoring
A.8.15 Long Range Planning

All programs recommended for immediate implementation by the Court's financial advisor will be implemented in 1983-1984 with the exception of the following:

A.4.01 Develop and Implement Early Childhood Education Program

1983-84 had originally been slated as a planning year. While no planning budget has been submitted for 1983-1984, it is intended that planning will proceed with a view toward implementation in 1984-85.

A.4.05 Expanded Opportunities for All-Day Kindergarten

This program was initially slated for full implementation in 1984-85 because of space limitations and the need for program planning. The reduction of pupil-teacher ratios will require the opening of additional classrooms for 1983-84. Planning is scheduled to proceed for implementation in 1984-85. No planning budget is included for 1983-84.

A.4.03 Restore After-School Tutorial Programs

Given the magnitude of efforts required to implement the proposed programs for 1983-84 and the priority assigned to this program, its implementation will remain under consideration for implementation at a later time.

A.4.09 Gateway Summer Institute

Time does not permit the implementation of this program in the summer of 1983.

A.4.10 Student Leadership

This program is currently operational. With respect to its priority, the proposed expansion will remain under consideration for implementation at a later time.

B.1.01 Lower Pupil-Teacher Ratios in Non-Integrated Schools

Classroom space limitations do not permit the reduction of pupil-teacher ratios in non-integrated schools in 1983-84 to a level below the reductions proposed for district-wide implementation A.3.01.

Respectfully submitted,

LASHLY, CARUTHERS, BAER
& HAMEL
A Professional Corporation

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Attorneys for the Board of
Education of the City of
St. Louis, Missouri

Certificate Of Service

I hereby certify that a true copy of the foregoing Report has been mailed this 15th day of July, 1983 by prepaid United States Mail to All Counsel of Record.

Kenneth Brostron

APPENDIX F*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
Eastern Division

Cause No. 72-100-C (4)

CROSS-CLAIM OF THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS

Craton Liddell, a minor, by Minnie Liddell, his mother and next friend, and Minnie Liddell; Joanna Goldsby, a minor, by Barbara Goldsby, her mother and next friend, and Barbara Goldsby; Deborah Yarber, a minor, by Samuel Yarber, her father and next friend, and Samuel Yarber; Nathalie Moore, a minor, by Louise Moore, her mother and next friend, and Louise Moore; Rachelle LeGrand, a minor, by Lois LeGrand, her mother and next friend, and Lois LeGrand; on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Plaintiffs,

and

Janice Adams and Jack Adams, Jr., minors, by Jerrianne Adams, their natural guardian and next friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, minors, by Catherine Neel, their natural guardian and next friend, and Catherine Neel; Mary Edington and Susan Edington, minors, by Horace Edington, their natural guardian and next friend, and Horace Edington; The Concerned Parents for Neighborhood Schools,

Plaintiffs,

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*Leave to file the pleadings herein was granted in part only; additional parties defendant were limited to St. Louis County certain officers thereof, and certain school districts located therein. See opinions of Court of Appeals, infra.

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis, and the National Association for the Advancement of Colored People,

Plaintiffs,

and

The United States of America,

Plaintiff,

and

The City of St. Louis,

Plaintiff,

v.

The Board of Education of the City of St. Louis,

Defendant and Cross-Claimant,

v.

The State of Missouri; Joseph P. Teasdale, Governor of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; James I. Spainhower, Treasurer of the State of Missouri; Stephen C. Bradford, Commissioner of Administration of the State of Missouri; the State of Missouri Board of Education, and its members Grover A. Gamm (President), Irving A. Williamson (Vice-President), Delmar A. Cobble, Jimmy Robertson, Dale M. Thompson, Donald W. Shelton, and Robert Welling; and Arthur Mallory, Commissioner of Education of the State of Missouri,

Defendants and Cross-Defendants,

and

The Affton Board of Education; the Bayless Board of Education; the Brentwood Board of Education; the Clayton Board of Education; the Ferguson-Florissant Board of Education; the Hancock Place Board of Education; the Hazelwood Board of Education; the Jennings Board of Education; the Kirkwood Board of Education; the Ladue Board of Education; the Lindbergh Board of Education; the Maplewood-Richmond Heights Board of Education; the Mehlville Board of Education; the Normandy Board of Education; the Parkway Board of Education; the Pattonville Board of Education; the Ritenour Board of Education; the Riverview Gardens Board of Education; the Rockwood Board of Education; the University City Board of Education; the Valley Park Board of Education; the Webster Groves Board of Education; the Wellston Board of Education; the Board of Education for the Special School District of St. Louis County; the Ft. Zumwalt Board of Education; the St. Charles Co. R-V Board of Education; the Wentzville R-IV Board of Education; the St. Charles Board of Education; the Francis Howell R-III Board of Education; the Dunklin R-V Board of Education; the Hillsboro R-III Board of Education; the Fox C-6 Board of Education; the Festus R-VI Board of Education; the 47 Crystal City Board of Education; the 73 DeSoto Board of Education; the Windsor C-1 Board of Education; the Grandview R-II Board of Education; the (E) Jefferson Co. R-VII Board of Education; the Northwest Jefferson Co. R-I Board of Education; the (E) Sunrise R-IX Board of Education; St. Louis County; St. Charles County; Jefferson County; the Missouri Housing Development Commission; the Housing Authority of St. Louis County; the Land Clearance for Redevelopment Authority of St. Louis County; the Land Clearance for Redevelopment Authority of the City of St. Louis;

Cross-Defendants,

and

Julius Dix, David Mahan, Anne Price, and Rufus Young, Jr. (Area Superintendents); Marjorie M. Weir (President), Donald W. Williams (Vice-President), Marjorie R. Smith (Secretary), Penelope Alcott, Gordon L. Benson, Henry M. Grich, Jr., Nathaniel Johnson, Betty Klinefelter, Lawrence E. Nicholson, Daniel Schesch, Daniel L. Schlafly, Dorothy C. Springer (Members of the Board of Education of the City of St. Louis); and Robert E. Wentz (Superintendent of Schools of the City of St. Louis),

Defendants.

Preliminary Statement

1. This is a cross-claim seeking declaratory and injunctive relief to redress the deprivation under color of state law of the rights, privileges, and immunities secured by the United States Constitution and laws to all school children in the City of St. Louis. The Board of Education of the City of St. Louis ("St. Louis Board") brings this action as cross-claimant in order to fulfill its constitutional obligation to operate a school system free of racial discrimination, and on behalf of its students whose education is its responsibility. This action seeks an end to the vestiges of the racially dual structure of public education established and maintained throughout the St. Louis metropolitan area by the State of Missouri and the other cross-defendants named herein. For purposes of this cross-claim, the "St. Louis metropolitan area" is defined as the City of St. Louis and St. Louis, St. Charles, and Jefferson Counties.

2. As set forth in detail below, the State of Missouri, the other cross-defendants, and their predecessors cooperated for many years in a deliberate and successful effort to create a racially dual structure of public education throughout the St. Louis metropolitan area. Prior to 1954 this racially dual metropolitan-wide structure of public education was based on two sets of laws

requiring racial segregation. First, state law absolutely mandated racial segregation of Missouri schools, and authorized the interdistrict transfer of black students to ensure that all schools were segregated. Those school districts with black residents either operated separate schools for black students or transferred black students to schools for blacks in other school districts in the metropolitan area. Second, by adoption of discriminatory zoning laws, enforcement of racially restrictive covenants, application of discriminatory housing policies, and other governmental actions, cross-defendants fostered residential segregation that confined black citizens to live only in certain school districts and excluded them from others. Through these two sets of laws, cross-defendants created and maintained a racially dual metropolitan-wide structure of public education. State action requiring residential segregation resulted in the total exclusion of blacks from certain school districts. Where blacks were permitted to live in the metropolitan area, state law required that they attend segregated schools and authorized interdistrict transfers to maintain segregation. Transfers took place between districts within counties, between districts in different counties, and between counties and the City of St. Louis. Thus, through a combination of residential segregation, racially segregated schools, and interdistrict transfers, cross-defendants linked all school districts in the metropolitan area and created a single, racially dual, metropolitan-wide structure of public education.

3. Following the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), the State of Missouri and the other cross-defendants continued virtually the same patterns of racial segregation in schools throughout the metropolitan area. Since 1954, the cross-defendants have failed to discharge their constitutional duty to dismantle the dual structure of public education they created in the St. Louis metropolitan area. They have continued to transfer students across district lines, consolidated and reorganized various school districts, blocked the consolidation of other school districts, assigned personnel on a discriminatory basis, and

taken other comparable actions all with the effect and/or purpose of perpetuating and expanding the racially dual structure of public education in the St. Louis metropolitan area. The State of Missouri and other cross-defendants herein have also perpetuated residential segregation that has contributed to the maintenance of segregated schools and frustrated court-ordered desegregation, including desegregation of the St. Louis public school system.

4. As a consequence of these actions, the public school systems in the St. Louis metropolitan area continue to bear the vestiges of the racially dual structure of public education established by cross-defendants prior to 1954. Based on available data, it is estimated that approximately 91 percent of all black faculty in the metropolitan area teach in only five districts — St. Louis, Normandy, University City, Wellston, and are more than 70 percent black, while 25 districts are less than 10 percent black, including 17 districts that have black enrollments of less than 1 percent. Furthermore, approximately 86 percent of all black children in the metropolitan area attend school in five school districts — St. Louis, Normandy, University City, Wellston, and Ferguson-Florissant — that have only 37 percent of the total metropolitan enrollment. Fewer than one percent of all black children in the St. Louis metropolitan area attend school in all St. Charles and Jefferson County districts, and eight virtually all-white districts in St. Louis County. Similarly, faculty hiring and assignments continue to reflect the racial identifiability of St. Louis area school districts. Based on available data, it is estimated that approximately 91 percent of black faculty in the metropolitan area teach in only five districts — St. Louis, Normandy, University City, Wellston, and Ferguson-Florissant. Of the remaining school districts, 34 have faculties that are less than 10 percent black, including 19 that have faculties less than 1 percent black, or no black faculty at all.

5. For the reasons summarily set out above, and detailed below, the St. Louis Board requests that this Court declare the public schools in the St. Louis metropolitan area to be unconstitutionally segregated, and order development and implementation of a desegregation plan for the St. Louis metropolitan area that will eliminate the vestiges of the racially dual metropolitan-wide structure of public education established by cross-defendants prior to 1954 and continued to the present.

Jurisdiction

6. This Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. §§ 1331(a), 1343(3) and (4), 2201, and 2202. This cause of action arises under 42 U.S.C. §§ 1981-83, 1988, and 2000d, and the Fourteenth Amendment to the Constitution of the United States.

Parties

7. Cross-claimant Board of Education of the City of St. Louis is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in the City of St. Louis.

8. Cross-defendant State of Missouri has ultimate responsibility for the education of children in that state.

9. Cross-defendants Joseph P. Teasdale, John Ashcroft, James I. Spainhower, and Stephen C. Bradford are sued in their respective official capacities as Governor, Attorney General, Treasurer, and Commissioner of Administration of the State of Missouri.

10. Cross-defendant Missouri State Board of Education, a body corporate organized under the laws of the State of Missouri, is charged with the general power and responsibility for supervising instruction in the public schools of Missouri. R.S. Mo. 1978, § 161.092. The Missouri State Board of Educa-

tion also is the successor in interest and responsibility to the previously existing St. Louis County Board of Education, St. Charles County Board of Education, and Jefferson County Board of Education. These county boards of education were established by the State in 1948 for the purpose of consolidating and reorganizing school districts. Senate Bill No. 307 (May 21, 1948). They were abolished in 1979. Mo. Laws 1979, § 1, p. 458 (August 1, 1979). Cross-defendants Grover A. Gamm, Irving A. Williamson, Delmar A. Cobble, Jimmy Robertson, Dale M. Thompson, Donald W. Shelton, and Robert Welling are sued in their official capacity as members of the State Board of Education.

11. Cross-defendant Arthur Mallory, Commissioner of Education of the State of Missouri, is sued in his official capacity as the chief administrative officer of the Missouri State Board of Education. R.S. Mo. 1978, § 161.112.

12. Each of the following cross-defendants is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in its respective jurisdiction within St. Louis County:

a. Affton Board of Education;

b. Bayless Board of Education;

c. Brentwood Board of Education;

d. Clayton Board of Education;

e. Ferguson-Florissant Board of Education. This cross-defendant is also sued as the successor to the Boards of Education of the former Berkeley, Scudder, and Kinloch School Districts. Scudder was annexed by Berkeley in 1960, and Berkeley and Kinloch were consolidated with Ferguson-Florissant in 1976;

f. Hancock Place Board of Education;

g. Hazelwood Board of Education;

h. Jennings Board of Education. This cross-defendant is also sued as the successor to the Board of Education of the former West Walnut Manor School District, which was annexed by Jennings in 1960;

i. Kirkwood Board of Education;

j. Ladue Board of Education;

k. Lindbergh Board of Education;

l. Maplewood-Richmond Heights Board of Education;

m. Mehlville Board of Education. This cross-defendant is also sued as the successor to the Board of Education of the former Jefferson Barracks School District, which was annexed by Mehlville in 1964;

n. Normandy Board of Education;

o. Parkway Board of Education;

p. Pattonville Board of Education. This cross-defendant is also sued as the successor to the Board of Education of the former Maryland Heights School District, which was annexed by Pattonville in 1962;

q. Ritenour Board of Education;

r. Riverview Gardens Board of Education;

s. Rockwood Board of Education;

t. University City Board of Education;

u. Valley Park Board of Education;

v. Webster Groves Board of Education; and

w. Wellston Board of Education.

13. Cross-defendant Special School District of St. Louis County is an educational instrumentality of the State of Missouri organized in 1957, with jurisdictional boundaries coterminous with St. Louis County, to provide educational opportunities to the County's handicapped children. In 1965 the cross-defendant State Board of Education designated the Special District also to provide vocational and technical educational programs for the entire County.

14. Each of the following cross-defendants is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in its respective jurisdiction within St. Charles County:

a. Ft. Zumwalt Board of Education;

b. St. Charles Co. R-V Board of Education;

c. Wentzville R-IV Board of Education;

d. St. Charles Board of Education; and

e. Francis Howell R-III Board of Education.

Each of the foregoing cross-defendants also is sued as the successor to any previously existing boards of education with which it has been reorganized or consolidated, or which it has annexed.

15. Each of the following cross-defendants is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in its respective jurisdiction within Jefferson County:

a. Dunklin R-V Board of Education;

b. Hillsboro R-III Board of Education;

c. Fox C-6 Board of Education;

d. Festus R-VI Board of Education;

e. 47 Crystal City Board of Education;

f. 73 DeSoto Board of Education;

g. Windsor C-1 Board of Education;

h. Grandview R-II Board of Education;

i. (E) Jefferson Co. R-VII Board of Education;

j. Northwest Jefferson Co. R-1 Board of Education; and

k. (E) Sunrise R-IX Board of Education.

Each of the foregoing cross-defendants also is sued as the successor to any previously existing boards of education with which it has been reorganized or consolidated, or which it has annexed.

16. Cross-defendant St. Louis County is a legal subdivision of the State of Missouri. Missouri Constitution, Article VI, Section 1.

17. Cross-defendant St. Charles County is a legal subdivision of the State of Missouri. Missouri Constitution, Article VI, Section 1.

18. Cross defendant Jefferson County is a legal subdivision of the State of Missouri. Missouri Constitution, Article VI, Section 1.

19. Cross-defendant the Missouri Housing Development Commission is a body corporate organized under the laws of the State of Missouri to assist in the development and financing of low- and moderate-income housing. R.S. Mo. 1978, § 215.030.

20. Cross-defendant the Housing Authority of St. Louis County is a municipal corporation organized under the laws of the State of Missouri for the purposes of clearing, replanning, and reconstructing areas in which unsafe housing conditions exist, and of providing safe and sanitary dwelling accommodations for persons of low income. R.S. Mo. 1978, § 99.030.

21. Cross-defendant the Land Clearance for Redevelopment Authority of St. Louis County is a municipal corporation organized under the laws of the State of Missouri for the purposes of clearing and replanning areas in which unsafe housing or other buildings exist. R.S. Mo. 1978, § 99.420.

22. Cross-defendant the Land Clearance for Redevelopment Authority of the City of St. Louis is a municipal corporation organized under the laws of the State of Missouri for the purposes of clearing and replanning areas in which unsafe housing or other buildings exist. R.S. Mo. 1978, § 99.330.

23. All of the foregoing cross-defendants are jointly and severally liable for the creation, maintenance, and perpetuation of the racially dual structure of public education in the St. Louis metropolitan area.

(a) Under Missouri law, the State of Missouri, its Governor, Attorney General, Treasurer, and Commissioner of Administration, its Board of Education and members, and it Commissioner of Education (¶¶ 8-11) (referred to throughout this cross-claim as the "State Education Cross-Defendants") have ultimate responsibility for public education in the State of Missouri, and for ensuring that local school districts are operated in conformity with the Fourteenth Amendment to the Constitution of the United States and federal laws requiring nondiscrimination in public education. The State Education Cross-Defendants also are responsible for providing financial support to local school districts and for establishing policy with respect to curriculum, teacher qualifications, and other related matters. The State Education Cross-Defendants are liable because they or their predecessors enacted and enforced constitutional and statutory provisions that created the racially dual structure of public education in the St. Louis metropolitan area, and because since 1954 they have failed to fulfill their constitutional obligation to take affirmative steps to dismantle the vestiges of that racially dual structure. They are also liable because they are responsible for the unconstitutional actions of their agents, the School District Cross-Defendants (*see* ¶ 23(b) below).

(b) Under Missouri law, the Boards of Education of the school districts in St. Louis, St. Charles, and Jefferson Counties, and the Special School District of St. Louis County, (¶¶ 12-15) (referred to throughout this cross-claim as the "School District Cross-Defendants") are agents of the State with certain delegated authority to supervise the instruction of students in their respective jurisdictions. The

School District Cross-Defendants are liable because they participated in the creation of an unconstitutional racially dual metropolitan-wide structure of public education through the commission of interdistrict constitutional violations with interdistrict effects. The School District Cross-Defendants also are joined in this action because each of them was affected by the constitutional violations of the State Education Cross-Defendants, the Housing and Local Government Cross-Defendants (*see* ¶ 23(c) below), and other School District Cross-Defendants, and participation of some or all of these districts will be necessary to provide a full and adequate constitutional remedy.

(c) Under Missouri law, the State of Missouri (¶ 8); its Governor, Attorney General, Treasurer and Commissioner of Administration (¶ 9); and the cross-defendants set forth in ¶¶ 16-22, and their predecessors (referred to throughout this cross-claim as the "Housing and Local Government Cross-Defendants") were and are responsible for the development, planning, site selection, zoning, issuance of permits, and/or management of public and private housing in the St. Louis metropolitan area. The Housing and Local Government Cross-Defendants are liable because they participated in the development and perpetuation of metropolitan-wide residential segregation. This residential segregation has been a key factor in creating and perpetuating the racially dual structure of public education and in frustrating court-ordered desegregation in St. Louis and elsewhere in the metropolitan area. The Housing and Local Government Cross-Defendants also are joined in this action because each of them was affected by the constitutional violations of the State Education Cross-Defendants, the School District Cross-Defendants, and other Housing and Local Government Cross-Defendants, and participation of some or all of these cross-defendants will be necessary to provide a full and adequate constitutional remedy.

The Establishment of the Racially Dual Metropolitan-Wide Structure of Public Education Prior to 1954

24. Prior to 1865, the State of Missouri prohibited the public education of black children. Act of February 16, 1847, § 1, 1847 Missouri Laws 103. In 1865 the Missouri Constitution was amended to allow for "separate schools . . . for children of African descent." Missouri Constitution, Article IX, § 2 (1865). From 1865 to 1954, or for almost 90 years, the State Education and School District Cross-Defendants, or their predecessors, operated a racially segregated structure of public education under color of state law. Black children were segregated by law from white children in the elementary and secondary schools of Missouri and denied the opportunity for an equal education. R.S. Mo. 1865, § 20, p. 262. In 1945 the State of Missouri elevated this longstanding statutory requirement of segregated education to a state constitutional command. Missouri Constitution, Article IX, Section 1(a)(1945). Missouri statutes implementing the constitutional mandate of segregated schools were not repealed until 1957, and the Missouri Constitution's requirement of segregated schools was not actually repealed by the State of Missouri until 1976.

25. In order to enforce its laws requiring segregated education, the State of Missouri enacted a series of statutes requiring, permitting, and supporting the transfer of black children from school districts without black schools to districts with schools for blacks. In 1917, for example, the State of Missouri enacted legislation creating a "Colored Consolidated High School District" in St. Louis County and expressly providing for the interdistrict transfer of "colored children." Act of April 9, 1917, § 11256, 1917 Missouri Laws 498 (repealed 1957). Similarly, in 1921 the state enacted new legislation authorizing county boards of education to pay the tuition costs of black students transferred to black schools in different school districts. Act of March 28, 1921, § 21, 1921 Mo. Laws 626.

26. Prior to 1954 the State Education and School District Cross-Defendants, or their predecessors, acting individually and in conjunction with one another, established a system of racial segregation between and among school districts in the St. Louis metropolitan area. In order to implement this racially dual metropolitan-wide structure of public education, the School District Cross-Defendants explicitly or tacitly agreed among themselves and with the State Education Cross-Defendants to provide black schools only in certain school districts. Other school districts with schools only for whites were required to, and did, transfer their black students across district, county, and city lines to districts with schools for blacks. This racially dual structure of public education was established and operated under color of state law and was implemented on a metropolitan-wide basis.

27. Cross-defendants failed to establish black elementary schools and high schools in all school districts in St. Louis, St. Charles, and Jefferson Counties, or established such schools long after the creation of schools for whites. For example, no black high school operated in St. Louis County until 1928, in St. Charles County until 1932, or in Jefferson County until 1939. Prior to the establishment of black schools in their local district, black children — regardless of the school district in which they lived — were transferred to black schools in the City of St. Louis, other counties, or other districts within their own county; lived with relatives in districts with black schools; or were discouraged from attending public school at all.

28. By 1954, at least 26 of the school districts in the three counties included in the St. Louis metropolitan area had black school-age children residing within their geographical limits. However, only four — Kinloch and Webster Groves in St. Louis County, Festus in Jefferson County, and St. Charles in St. Charles County — operated high schools for blacks. The districts with black school-age students but no high schools for blacks included: Ferguson-Florissant, Riverview Gardens,

Berkeley, Pattonville, Scudder, Maryland Heights, Ritenour, Normandy, Wellston, Clayton, Brentwood, Maplewood-Richmond Heights, Rockwood, Valley Park, Kirkwood, Parkway, and Ladue in St. Louis County; Herculaneum, Crystal City, and DeSoto in Jefferson County; and Augusta and Wentzville in St. Charles County. Moreover, six of the 26 school districts with black school-age children did not even have elementary schools for blacks: Berkeley, Pattonville, Normandy, Valley Park, and Ladue in St. Louis County; and Augusta in St. Charles County. School districts with black school-age children, but no black high schools and/or elementary schools, regularly engaged in interdistrict transfers to maintain the metropolitan-wide structure of racially dual schools.

29. The State Education and School District Cross-Defendants supported, supervised, and funded the pre-1954 interdistrict student transfers in the St. Louis metropolitan area that have been described in paragraphs 25 to 28. State funds were used to create segregated schools and to keep them segregated. The State of Missouri and its officials and agents provided funds and educational services on a segregated basis and in a manner that disadvantaged black students, faculty, and schools in the St. Louis metropolitan area. Black schools were maintained at an inferior level of quality.

30. Prior to 1954 the State Education and School District Cross-Defendants also caused the faculties of the schools in the St. Louis metropolitan area to be segregated so that black schools had only black faculty and white schools had only white faculty.

31. Prior to 1954, the Housing and Local Government Cross-Defendants, or their predecessors, helped to create and perpetuate the racially dual metropolitan-wide structure of public education by requiring and encouraging racial segregation in residential housing throughout the metropolitan area through the following actions, among others:

(a) In 1916 the City of St. Louis adopted a zoning ordinance requiring mandatory residential segregation. Although this ordinance was overturned in the courts, the City nevertheless reenacted the same law. These statutes fostered a pattern of residential segregation that has continued to the present.

(b) Prior to 1949, the courts of the State of Missouri enforced restrictive covenants forbidding the sale of property to blacks, and state officials continued to record such covenants thereafter. Racially restrictive covenants were recorded and enforced in the City of St. Louis and each and every school district in St. Louis, St. Charles, and Jefferson Counties. This practice reinforced residential segregation already in place and further contributed to the segregation of schools throughout the St. Louis metropolitan area.

(c) Prior to 1954, all conventional public housing for black residents in the St. Louis metropolitan area was built in the black neighborhoods of the City of St. Louis and was occupied exclusively by black families. Conversely, all public housing for white residents was built in white neighborhoods in the metropolitan area and occupied exclusively by whites.

32. The actions described in paragraph 31 fostered widespread residential segregation in the St. Louis metropolitan area and supported and maintained the segregated structure of public education prior to 1954. Together these actions and policies operated to confine black school-aged residents to certain school districts and exclude them entirely from others. Those districts which had no black students at all did not need to transfer black students to other school districts, and simply operated schools exclusively for whites. School districts with black residents maintained segregated schools through the metropolitan-wide system of interdistrict transfers described in paragraphs 25-29.

33. Other forms of racial discrimination by the State of Missouri, the Housing and Local Government Cross-Defendants, and other governmental bodies fostered and supported the racially dual structure of public education in the St. Louis metropolitan area prior to 1954. These practices included discrimination in public and private employment; discriminatory annexations and deannexations; segregation of public facilities and accommodations; and discriminatory police activities. These actions had the purpose and effect of confining blacks to prescribed residential communities and facilitating the complete segregation of public schools in the metropolitan area.

Failure to Disestablish the Racially Dual Metropolitan-Wide Structure of Public Education After 1954

34. Since 1954, the cross-defendants have failed to fulfill their constitutional duty to disestablish the racially dual metropolitan-wide structure of public education. Cross-defendants' failure to fulfill their constitutional duty is evidenced by affirmative conduct having the effect and/or undertaken with the purpose of continuing the racially dual metropolitan-wide structure of public education. It is also evidenced by the failure to take other actions that would have encouraged and promoted desegregation. For example, cross-defendants continued the segregative transfer of students while failing to permit transfers that would have a desegregative effect (¶ 35, *infra*); failed to implement and blocked school district consolidations that would have had a desegregative effect while implementing others that reinforced pre-1954 segregated conditions (¶ 36, *infra*); committed intradistrict constitutional violations with interdistrict effects (¶ 37, *infra*); operated a racially dual structure of special and vocational education (¶ 38, *infra*); and maintained, reinforced, and expanded residential segregation in the St. Louis metropolitan area (¶¶ 39-40, *infra*).

35. Notwithstanding the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* the State Education and School District Cross-Defendants failed to end interdistrict transfers with segregative effects, refused to permit interdistrict transfers that would have desegregative effects, and have failed generally to discharge their duty to eliminate all vestiges of segregated schools. These actions have included, among others, the following:

(a) The interdistrict transfers that implemented the racially dual metropolitan structure of education prior to 1954 continued after the Supreme Court's decision in *Brown* v. *Board of Education.* Instead of immediately and effectively desegregating their public schools, the State Education and School District Cross-Defendants continued to transfer black students from school districts with schools exclusively for whites to school districts with schools for blacks. Likewise, these cross-defendants supported, reinforced, and refused to prevent the efforts of white parents to avoid desegregation by transferring their children to school districts that continued to maintain schools exclusively for whites. Although these transfers declined after 1954, they continued at a level sufficient to impede the dismantling of the racially dual structure of public education that cross-defendants had established in the St. Louis metropolitan area.

(b) The State Education and School District Cross-Defendants consistently have refused to enter into cooperative arrangements designed to promote, or otherwise to authorize or encourage, student transfers to alleviate segregated conditions in the St. Louis metropolitan area generally and in the schools of the City of St. Louis in particular. For example, in April 1967 the St. Louis Board wrote to each of the eight St. Louis County school districts which bordered the City of St. Louis to the north and west and suggested that the city and county

districts cooperate in an effort to ameliorate racial imbalances existing in the various school districts. The St. Louis Board also suggested a teacher exchange program to help reduce the racial imbalances in the faculties of the various school districts. None of the eight county school districts responded favorably to the St. Louis Board's request, and no transfers of any kind were initiated. In subsequent years the St. Louis Board renewed its attempts to encourage voluntary exchanges, but county school districts continued to refuse to cooperate.

(c) The St. Louis Board made similar efforts to encourage interdistrict transfers to promote desegregation pursuant to paragraph 12(a) of this Court's order dated May 21, 1980. Letters were sent; meetings were held; and the chairman of the court-appointed Desegregation Monitoring and Advisory Committee was assigned to encourage interdistrict transfers to relieve segregated conditions. However, very few districts agreed to cooperate, and no concrete results were forthcoming. Similarly, the State Education Cross-Defendants failed to develop an effective plan to encourage transfers, and no significant interdistrict desegregation has been achieved.

(d) The Missouri state legislature has rejected legislation designed to facilitate voluntary desegregation of the St. Louis metropolitan area schools. During each of the last two legislative sessions, a bill has been introduced that would have provided fiscal incentives to encourage the voluntary transfer of students between schools to promote racial integration in education. S. 487, 1st Sess., 88th Gen. Ass., State of Mo. However, these bills were never enacted. Most recently the State Education Cross-Defendants even withdrew a proposal for a fiscal incentive bill from their final proposed plan for voluntary interdistrict student exchanges under ¶ 12(a) of this Court's Order of May 21, 1980. The failure of the State to enact

such legislation has had the effect and/or purpose of maintaining segregated conditions in the St. Louis metropolitan area.

36. State Education and School District Cross-Defendants have blocked consideration of, or rejected, school district consolidations and reorganizations that would have had desegregative effects, while implementing others that have reinforced segregated conditions in the St. Louis metropolitan area schools. These actions have included, among others, the following:

(a) In 1967, the Missouri state legislature established the Missouri School District Reorganizaiton Commission, chaired by state representative James I. Spainhower, and charged with developing a master plan for school district reorganization throughout the State. The Commission established several criteria to guide its work, including a provision that "whenever possible, each district should include a population of varied economic, racial, and ethnic characteristics." On April 19, 1968, the Commission held a hearing at which the St. Louis Board submitted a "proposal for school district reorganization of the greater St. Louis area." The "proposal" in part recommended the abolition of all school district boundaries in the City and in St. Louis County, as well as the appointment by the Governor of a metropolitan St. Louis Board of Education with power "to create and draw boundaries for approximately 10 local school districts, similar in enrollment, including both elementary and secondary schools, in such a manner as to realize maximum operational efficiency, equality of educational opportunity, and racial, ethnic and economic heterogeneitv."

In November 1968, the Spainhower Commission recommended the division of the State into 20 regional school districts composed of 132 local school districts. The St. Louis metropolitan area regional school district would

As an alternative, the Adams group urges us to adopt a 12(b) plan which would simply merge both vocational systems by ordering the state to designate the city board as the "area vocational school" (AVS) for the city and to designate the SSD as the AVS both for city and county.[19] It is argued that a single vocational system under one vocational district could best desegregate the vocational programs currently being separately operated by the SSD and city board.[20] We note that in so arguing, Adams ignores the fact that a complete merger of the SSD and city board's vocational systems could be ordered under the

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O'Fallon's new tenth grade Occupational Orientation magnet program for city students. *Year Four* (1984-1985) — (1) 75% white and 25% black in Special District Technical schools; and (2) 65% white and 35% black at O'Fallon. *Year Five* (1985-1986) — The 12(b) plan's ultimate goal is to have a racial balance of 65% white and 35% black (allowing a ten percentage point diferential either way) at each of the four technical schools in existence then — North County Technical, South County Technical, West County Technical and O'Fallon Technical. The plan also provides that it is certainly permissible to attain the ultimate 65%/35% goal earlier than is contemplated in the initial five-year period.

Other provisions of the plan, such as the establishment of at least seven community-based vocational programs by Year Four (1984-1985) do not have specific racial distribution goals.

[19]The term "area vocational school" (AVS) is a term of art because the Missouri State Board of Education is authorized to "designate" area vocational schools. Such designation makes the AVS eligible for significant additional financial support to serve vocational needs. Vocational education training in Missouri is delivered at comprehensive high schools, junior colleges and area vocational schools; an AVS is defined as that part of a school district which has been designated by the State Board of Education to provide vocational education for its students and students from other specified school districts.

[20]The Adams group also argues that costs and attorneys' fees should be assessed against the parties which submitted the 12(b) plan adopted by the district court. We reject this contention.

(d) In addition to rejecting specific consolidation proposals as set forth above, the State of Missouri has used its laws to make desegregative consolidations and reorganizations more difficult to implement. For example, the State has maintained the City of St. Louis as a "metropolitan school district" with the effect and/or purpose of preventing the St. Louis Board from consolidating St. Louis schools with those in adjoining metropolitan counties. *See* R.S. Mo. 1965, § 162.571. Similarly, in 1967 the State of Missouri imposed a complete moratorium on all pending school district consolidation proceedings, including those underway in St. Louis County. The State did not lift this moratorium until 1977, and even then it imposed significant restrictions intended to make consolidations and reorganizations much more difficult than they had been previously. R.S. Mo. 1978, § 162.222. These barriers were enacted with the effect and/or purpose of preventing consolidations and annexations that would have removed the vestiges of the dual structure of public education in the St. Louis metropolitan area.

(e) While blocking consideration of, or rejecting, consolidations and reorganizations that would have had desegregative effects, State Education and School District Cross-Defendants approved many reorganizations, consolidations, and boundary changes. However, few if any had desegregative effects, and many increased and reinforced segregated conditions within the St. Louis metropolitan area.

37. The School District Cross-Defendants reinforced, maintained, and continued the segregated conditions in the St. Louis metropolitan area schools through a series of intradistrict constitutional violations with interdistrict effects. These actions included, among others, the following: the maintenance of racially identifiable schools; discriminatory construction of temporary and permanent school facilities; discriminatory school

closings; gerrymandering of attendance areas and feeder patterns; discriminatory optional attendance zones and noncontiguous attendance area; discriminatory pupil transportation; discriminatory faculty and administrative hirings and assignments; discriminatory allocation of resources; in-school segregation and discriminatory discipline; discriminatory assignment of minority children to the St. Louis County Special School District; and school district opposition to zoning changes and other proposals that would have permitted the construction of low- and moderate-income housing. The School District Cross-Defendants committed these acts with the effect and/or purpose of maintaining segregation within their own school districts, within the City of St. Louis, and throughout the St. Louis metropolitan area.

38. State Education Cross-Defendants operated a Special School District in St. Louis County with the effect and/or purpose of maintaining segregated schools within the St. Louis metropolitan area. The separate vocational and special educational programs operated by the St. Louis County Special School District are vestiges of the racially dual structure of public education in the St. Louis metropolitan area. Nevertheless, the State Education Cross-Defendants, with segregative effect and/or purpose, have refused to merge this Special School District with the vocational and special education programs of the St. Louis Board. Their continued refusal is demonstrated by their report to this Court on December 15, 1980, under ¶ 12(b) of the Court's Order dated May 21, 1980.

39. Since 1954 the Housing and Local Government Cross-Defendants have continued to employ segregative housing practices that have had the effect and/or purpose of restricting blacks to certain residential communities in the metropolitan area. Such segregative practices have perpetuated the existence of the racially dual structure of public education and have helped frustrate efforts at school desegregation in the St. Louis metropolitan area, including efforts of the St. Louis Board of

Education to implement this Court's order dated May 21, 1980. These acts have included, among others, the following:

(a) The Housing and Local Government Cross-Defendants have pursued segregative public housing practices with the effect and/or purpose of restricting blacks to the City of St. Louis and certain prescribed residential communities in the metropolitan area. Virtually all new conventional public housing projects built in the metropolitan area since 1954 (other than those constructed for elderly persons) have been built in, or on the fringe of, black residential communities and occupied almost exclusively by blacks. Similarly, the Housing and Local Government Cross-Defendants have caused virtually all subsidized housing under the Sections 221(d)(3), 235, and 236, and Section 8 programs to be made available on a segregated basis; blacks have occupied subsidized housing in black areas, and whites have occupied such housing in white areas. These and similar housing practices were approved or supported by the appropriate housing agencies of the State of Missouri and St. Louis County. Such practices have intensified and not ameliorated the effects of pre-1954 school segregation in the metropolitan area.

(b) The Housing and Local Government Cross-Defendants have pursued urban renewal practices with the effect and/or purpose of restricting blacks to the City of St. Louis and certain prescribed residential communities in the metropolitan area. Under the direction of these cross-defendants, public officials have demolished a disproportionate number of dwellings in black and sometimes integrated communities without making appropriate housing available for displaced families. As a result, they have dislocated a disproportionate number of blacks into predominantly black neighborhoods. These practices have perpetuated the vestiges of the dual structure of education in the metropolitan area.

(c) The Housing and Local Government Cross-Defendants also have failed to take actions and follow policies that would have promoted integrated residential opportunities. For example, cross-defendants have not used subsidized housing to promote integration or rezoned land areas to encourage development of low-income and multi-family housing. Such omissions have perpetuated residential segregation and prevented the desegregation of public schools in the St. Louis metropolitan area.

(d) The Housing and Local Government Cross-Defendants have failed to fulfill their constitutional and statutory duty to enforce laws and regulations prohibiting discrimination in housing. For example, they have failed to enforce fair housing laws; failed to prohibit discrimination by licensed real estate agents and brokers; and failed to prohibit "redlining" and other discriminatory practices by regulated lending and banking institutions. Such omissions have perpetuated residential segregation and prevented the desegregation of public schools in the St. Louis metropolitan area.

40. The Housing and Local Government Cross-Defendants and other governmental bodies, have fostered other forms of racial discrimination that have supported the racially dual structure of public education in the St. Louis metropolitan area since 1954. These discriminatory practices have included: discrimination in public and private employment; discriminatory annexations and deannexations; discriminatory siting of public works projects such as highways; and discriminatory police activities. These actions have had the effect and/or purpose of restricting blacks to prescribed residential communities in the metropolitan area. They have helped to maintain segregated schools, caused resegregation of other schools, and frustrated efforts at desegregation. At the same time, the State's maintenance of a racially dual metropolitan-wide structure of public education contributed to residential segregation by identifying certain geographic areas as black and others as white.

Need for Relief

41. As a result of the acts complained of above in paragraphs 34 to 40, the segregated conditions that existed in the St. Louis metropolitan area schools in 1954 persist today. Segregation continues both between school districts, and among schools within various school districts, in the St. Louis metropolitan area. Notwithstanding this Court's order dated May 21, 1980, and the St. Louis Board's efforts to comply with that Order, a large majority of the black students in the public schools of the City of St. Louis still attend 62 all-black or predominantly-black schools. Similarly, as demonstrated by the statistics in paragraph 4 above, school districts in the St. Louis metropolitan area continue to be racially identifiable with reference to both pupil enrollments and faculty assignments.

42. Unless enjoined by order of this Court, cross-defendants will continue to fail to eliminate the vestiges of the unconstitutional racially dual structure of education in the St. Louis metropolitan area. No adequate remedy is available at law.

43. Cross-claimant the St. Louis Board cannot meet its constitutional duty to eliminate the effects of past segregation of the students of the City of St. Louis without remedying the effects of the racially dual metropolitan-wide structure of public education — of which the City of St. Louis is an integral part — created and maintained by cross-defendants.

44. The cross-defendants identified herein must participate in this Court's desegregation order to ensure a complete and constitutional remedy that will eradicate the vestiges of Missouri's racially dual structure of public education and a century and a half of racial discrimination in the St. Louis metropolitan area.

Prayer for Relief

WHEREFORE, cross-claimant the Board of Education of the City of St. Louis respectfully requests that this Court:

(a) enter an order pursuant to 28 U.S.C. § 2201 declaring that cross-defendants and their predecessors created, maintained, and continue to perpetuate a racially dual structure of public education throughout the St. Louis metropolitan area in violation of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. §§ 1981-83 and 2000d;

(b) enter an order requiring the cross-defendants identified herein, their successors in office, agents, employees, and all persons in active concert or participation with them, to cease their illegal and unconstitutional conduct and to develop and implement a plan to correct the constitutional violations referred to above. Such a plan should eliminate, to the maximum extent practicable, the remaining vestiges of the racially dual structure of public education in the St. Louis metropolitan area, without regard to school district boundaries and within a constitutionally acceptable period of time. The plan should encompass the City of St. Louis and the Counties of St. Louis, St. Charles, and Jefferson, and should include all school districts that the Court determines to be necessary for an effective, complete, practicable, and stable remedy. The plan should include the reorganization and consolidation of school districts; the establishment of magnet schools; the nondiscriminatory transportation of pupils; the desegregation of faculty and staff; procedures for nondiscrimination in classroom and program assignments, and in discipline; compensatory programs to overcome the effects of past discrimination; and such other provisions and programs as are needed to eliminate the remaining vestiges of segregation in the school districts and schools in the St. Louis metropolitan area. Finally, the plan should be designed and administered in a manner that shall be fair, equitable, and racially nondiscriminatory to all of the students and citizens in the St. Louis metropolitan area;

(c) enter an order pursuant to 42 U.S.C. § 1988 allowing cross-claimant its costs and reasonable attorneys' fees in prosecuting this cross-claim; and

(d) grant such other relief as the Court finds just and proper.

LASHLY, CARUTHERS, THIES,
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A Professional Corporation

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/s/ Kenneth C. Brostron

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Attorneys for the Board of
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
Eastern Division

Cause No. 72-100-C (C)

CALDWELL PLAINTIFFS-INTERVENORS' AMENDED, SUPPLEMENTAL AND CROSS COMPLAINT FOR INTERDISTRICT DESEGREGATION

Craton Liddell, a minor, by Minnie Liddell, his mother and next friend, and Minnie Liddell; Joanna Goldsby, a minor, by Barbara Goldsby, her mother and next friend, and Barbara Goldsby; Deborah Yarber, a minor, by Samuel Yarber, her father and next friend, and Samuel Yarber; Nathaniel Moore, a minor, by Louise Moore, her mother and next friend, and Louise Moore; Rachelle LeGrand, a minor, by Lois LeGrand, her mother and next friend, and Lois LeGrand; on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Plaintiffs,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis, and the National Association for the Advancement of Colored People and its City of St. Louis Branch,

Plaintiffs-Intervenors,

and

Janice Adams and Jack Adams, Jr., minors, by Jerrianne Adams, their natural guardian and next friend, and Jerrianne Adams; Catherine M. Neel, their natural guardian and next

friend, and Catherine Neel (sic); Mary Edington and Susan Edington, minors, by Horace Edington, their natural guardian and next friend and Horace Edington; The Concerned Parents for Neighborhood Schools,

Plaintiffs-Intervenors,

and

The United States of America,

Plaintiff-Intervenor,

and

The City of St. Louis,

Plaintiff-Intervenor and Cross-Defendant,

v.

The Board of Education of the City of St. Louis,

Defendant and Cross-Claimant,

v.

The State of Missouri; The State of Missouri Board of Education; and Arthur Mallory, Commissioner of Education of the State of Missouri,

Added Defendants
[by order of 13 July 1977],

and

Joseph P. Teasdale, Governor of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; James I. Spainhower, Treasurer of the State of Missouri; and Grover A. Gamm, Irving A. Williamson, Delmar A. Cobble, Jimmy Robertson, Dale M. Thompson, Donald W. Shelton, and

Robert Welling, members of the State Board of Education, and Stephen C. Bradford, Commissioner of Administration of the State of Missouri,

Added Defendants
[by order of 27 June 1980]

and

Special School District of St. Louis County,

Added Defendant
[by order of 12 September 1980],

and

The Affton Board of Education; the Bayless Board of Education; the Brentwood Board of Education; the Clayton Board of Education; the Ferguson-Florissant Board of Education; the Hancock Place Board of Education; the Hazelwood Board of Education; the Jennings Board of Education; the Kirkwood Board of Education; the Ladue Board of Education; the Lindbergh Board of Education; the Maplewood-Richmond Heights Board of Education; the Mehlville Board of Education; the Normandy Board of Education; the Parkway Board of Education; the Pattonville Board of Education; the Ritenour Board of Education; the Riverview Gardens Board of Education; the Rockwood Board of Education; the University City Board of Education; the Valley Park Board of Education; the Webster Groves Board of Education; the Wellston Board of Education; the Ft. Zumwalt Board of Education; the St. Charles Co. R-V Board of Education; the Wentzville R-IV Board of Education; the St. Charles Board of Education; the Francis Howell R-III Board of Education; the Dunklin R-V Board of Education; the Hillsboro R-III Board of Education; the Fox C-6 Board of Education; the Festus R-VI Board of Education; the 47 Crystal City Board of Education; the 73 DeSoto Board of Education; the Windsor C-1 Board of Education; the Grand-

view R-II Board of Education; the (E) Jefferson Co. R-VII Board of Education; the Northwest Jefferson Co. R-I Board of Education; the (E) Sunrise R-IX Board of Education; St. Louis County; St. Charles County; Jefferson County; the Missouri Housing Development Commission; the Housing Authority of St. Louis County; the Housing Authority of the City of St. Louis; the Land Clearance for Redevelopment Authority of the City of St. Louis; the Land Clearance for Redevelopment Authority of St. Louis County,

Newly-Added Defendants,

and

Julius Dix, David Mahan, Anne Price, and Rufus Young, Jr. (Area Superintendents); Marjorie M. Weir (President), Donald W. Williams (Vice-President), Marjorie R. Smith Benson, Henry M. Erich, Jr., Nathaniel Johnson, Betty Klinefelter, Lawrence E. Nicholson, Daniel Schesch, Daniel L. Schlafly, Dorothy C. Springer (Members of the Board of Education of the City of St. Louis); and Robert E. Wentz (Superintendent of Schools of the City of St. Louis),

Defendants.

CALDWELL PLAINTIFFS-INTERVENORS' AMENDED, SUPPLEMENTAL AND CROSS COMPLAINT FOR INTERDISTRICT DESEGREGATION

Introductory Statement

1. This is an amended and supplemental complaint, and as against the plaintiff-intervenor City of St. Louis, a cross-complaint, seeking declaratory and injunctive relief to redress the deprivation under color of state law of the rights, privileges, and immunities secured by the United States Constitution and laws to all school children in the St. Louis metropolitan area,

which includes the City of St. Louis and St. Louis, St. Charles and Jefferson Counties.

2. The State of Missouri and other defendants have, pursuant to constitutional and statutory policy, and (sic) ingrained practice, custom and usage, operated either a racially dual metropolitan system of public education or denied public educational opportunities altogether to black children in the St. Louis metropolitan area. Prior to 1954 this racially dual metropolitan-wide system of public education was mandated and enforced by explicit constitutional and statutory law. Those school districts with black residents either operated separate schools for black students or transferred black students to separate schools for blacks operated by other school districts in the St. Louis metropolitan area.

3. In addition to the racially discriminatory policies and practices of State and local educational authorities, racially discriminatory governmental housing and land-use policies and practices and racial discrimination in the private sector supported by such public policies and practices are also substantially responsible for the school and residential racial segregation which characterizes the St. Louis metropolitan area. Discriminatory housing and land-use policies have worked in a reciprocal relationship with the segregative policies and practices of school authorities to create and perpetuate racially segregated schooling in racially segregated neighborhoods. These policies and practices have contained black persons in prescribed neighborhoods and schools in central and north St. Louis and contiguous suburban communities while parts of South St. Louis and the substantial remaining parts of the metropolitan area have been preserved for residence and schooling for whites only.

4. Despite the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), the State of Missouri and the other defendants herein continued their policies and

practices of *de jure* racial dualism throughout the metropolitan area, and failed and refused to discharge their constitutional duty to dismantle the dual system of public education they created in the St. Louis metropolitan area. Instead, the defendants have through numerous actions prepetuated, expanded and entrenched the racially dual system. The State of Missouri and other defendants herein have also initiated and perpetuated residential racial segregation that has contributed to, and operated in lock-step with, the area-wide dual system of segregated schools, and frustrated court-ordered desegregation, including desegregation of the St. Louis public school system. The result of this compounded dual system is that the great majority of schools and school districts in the metropolitan area are rigidly segregated along racial lines.

5. The public school systems in the St. Louis metropolitan area therefore continue to bear the vestiges of the racially dual system of public education set in place by defendants prior to 1954 and exacerbated by intentional discriminatory conduct thereafter. Plaintiffs-intervenors therefore pray for a declaratory judgment that the public schools in the St. Louis metropolitan area are unconstitutionally segregated by race, and for a permanent injunction implementing a system-wide inter-district desegregation plan for the St. Louis metropolitan area that will eliminate the vestiges of the racially dual metropolitan-wide system of public education established by defendants prior to 1954 and continued to the present.

Jurisdiction

6. The subject-matter jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§1331(a), 1343(3) and (4), 2201, and 2202, with respect to causes of action arising under 42 U.S.C. §§1981, 1982, 1983, 1988 and 2000d, and the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

Parties Plaintiff

7. The plaintiffs-intervenors, Earline Caldwell, et al., named in the caption of this complaint, are children attending Missouri public schools in the City of St. Louis, and their parents, and the National Association for the Advancement of Colored People through its St. Louis City Branch. The Caldwell plaintiffs were permitted to intervene by virtue of a 1976 decision of the Court of Appeals, *Liddell* v. *Caldwell,* 546 F.2d 768 (1976), *cert. denied,* 433 U.S. 914 (1977).

8. Pursuant to FED. R. CIV. P. 23(a) and (b)(2) plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated. Plaintiffs represent a class consisting of all citizens of the United States who are students, and their parents, presently attending or who in the future will attend the public schools in the St. Louis metropolitan area.

9. The members of the class represented by plaintiffs are so numerous as to make it impracticable to bring them all before the Court; there are common questions of law and fact affecting the rights of plaintiffs and rights of members of the class; the claims of plaintiffs are typical of the claims of the class; and plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Parties Defendant

10. The orginal defendants in this action are the Board of Education of the City of St. Louis (a body corporate organized under the laws of Missouri, with certain State-delegated authority to supervise the instruction of pupils in the City of St. Louis), its individual members, its superintendent of schools, and its area superintendents (named in the caption) [hereinafter referred to as "St. Louis Board" and included in all references to "school district defendants"]. On 9 January 1981 the Board

moved for leave to file a proposed cross-claim, and for leave to add additional parties to its cross-claim, seeking essentially the same relief (against most of the same parties) as this complaint seeks.

11. The added defendants State of Missouri, State Board of Education, and State Commissioner of Education (named in the caption) were added to this case as parties defendant by order of this Court dated 13 July 1977. The Governor, Attorney General, Treasurer, and Commissioner of Administration of the State of Missouri, along with the individual members of the State Board of Education (all named in the caption), were added as parties defendant to this litigation by order of this Court entered 27 June 1980. The State Board of Education is a body corporate organized under the laws of Missouri and is charged with the general power and responsibility for the supervision of public education in Missouri, to assist the State in fulfilling the obligation imposed by the Missouri Constitutuion to provide for the establishment and maintenance of free public schools for the gratuitous instruction of all persons. The State Board also is the successor in interest and responsibility to the previously existing St. Louis County, St. Charles County, and Jefferson County Boards of Education, established by the State in 1948 for the purpose of consolidating and reorganizing school districts, and abolished in 1979. The individual State defendants are sued in their official capacities. [Hereinafter these defendants will be referred to as "State defendants."]

12. The City of St. Louis, permitted to intervene as a party plaintiff by prior order of the Court, is a municipal corporation organized under the laws of Missouri; the area of its jurisdiction is co-extensive with that of the St. Louis Board. This complaint states a cross-claim against the plaintiff-intervenor City of St. Louis, including its Community Development Agency [hereinafter included in references to "housing and local government defendants"].

13. Added defendant Special School District of St. Louis County is an educational instrumentality of the State of Missouri organized in 1957, with jurisdictional boundaries coterminous with St. Louis County, to provide educational opportunities to handicapped children. In 1965 the State Board of Education designated the Special District to also provide vocational and technical educational programs for the entire county. The Special District was added as a party defendant on 12 September 1980 on the motion and complaint of the Caldwell plaintiffs-intervenors.

Newly-Added Parties Defendant

14. Each of the following newly added defendants [hereinafter included among "school district defendants"] is a body corporate organized under the laws of Missouri with certain State-delegated authority to supervise the instruction of pupils attending the Missouri public educational system (some of the newly added defendants are successors to previous bodies corporate organized for the same purposes):

(a) Affton Board of Education;

(b) Bayless Board of Education;

(c) Brentwood Board of Education;

(d) Clayton Board of Education;

(e) Ferguson-Florissant Board of Education;

(f) Hancock Place Board of Education;

(g) Hazelwood Board of Education;

(h) Jennings Board of Education;

(i) Kirkwood Board of Education;

(j) Ladue Board of Education;

(k) Lindbergh Board of Education;

(l) Maplewood-Richmond Heights Board of Education;

(m) Mehlville Board of Education;

(n) Normandy Board of Education;

(o) Parkway Board of Education;

(p) Pattonville Board of Education,

(q) Ritenour Board of Education;

(r) Riverview Gardens Board of Education;

(s) Rockwood Board of Education;

(t) University City Board of Education;

(u) Valley Park Board of Education;

(v) Webster Groves Board of Education;

(w) Wellston Board of Education.

15. Each of the following newly-added defendants [also included hereafter among "school district defendants"] is a body corporate organized under the laws of Missouri with certain State-delegated authority to supervise the instruction of pupils attending the State system of public education, each of which is located in St. Charles County:

(a) Fort Zumwalt Board of Education;

(b) St. Charles County R-V Board of Education;

(c) Wentzville R-IV Board of Education;

(d) St. Charles Board of Education; and

(e) Francis-Howell R-III Board of Education.

16. Each of the following newly-added defendants [also "school district defendants"] is a body corporate organized under the laws of Missouri with certain State-delegated authority to supervise the instruction of pupils attending the State's system of public education; each defendant is located in Jefferson County:

(a) Dunklin R-V Board of Education;

(b) Hillsboro R-III Board of Education;

(c) Fox C-6 Board of Education;

(d) Festus R-VI Board of Education;

(e) 47 Crystal City Board of Education;

(f) 73 DeSoto Board of Education;

(g) Windsor C-1 Board of Education;

(h) Grandview R-III Board of Education;

(i) (E) Jefferson Co. R-VII Board of Education;

(j) Northwest Jefferson Co. R-I Board of Education; and

(k) Sunrise R-IX Board of Education.

17. Each of the following newly-added defendants [hereinafter included among "housing and local government defendants"] is a political subdivision of the State of Missouri organized pursuant to the State's constitution and laws:

(a) St. Louis County;

(b) St. Charles County;

(c) Jefferson County.

18. The newly-added defendant Missouri Housing Development Commission [among the "housing and local government defendants"] is a body corporate organized under the laws of Missouri to assist in the development and financing of low- and moderate-income housing.

19. The following two newly-added defendants are municipal corporations organized under the laws of Missouri for the purposes of clearing, replanning, and reconstructing areas in which unsafe housing conditions exist, and of providing safe and sanitary dwelling accommodations for persons of low income:

(a) Housing Authority of St. Louis County;

(b) Housing Authority of the City of St Louis.

20. The following two newly-added defendants ["housing and local government defendants"] are municipal corporations organized under the laws of Missouri for the purposes of clearing and replanning areas in which unsafe housing or other buildings exist:

(a) Land Clearance for Redevelopment Authority of St. Louis County;

(b) Land Clearance for Redevelopment Authority of the City of St. Louis.

Summary of Claim for Relief

21. All of the foregoing defendants — original, added, cross and newly-added — are jointly and severally liable for the creation, maintenance, perpetuation and expansion of the racially dual system of public education extant in the St. Louis metropolitan area. From the time the defendant State of Missouri became a state (as a slave state) until the present time, it has, pursuant to explicit constitutional and statutory policy and ingrained practice, custom and usage, either operated a racially dual system of public education, or denied public educational opportunities altogether to black children, in the St. Louis metropolitan area. The State has carried out this system of educational apartheid through various of its agencies and instrumentalities, including the other defendants, as well as through the joint and reciprocal cooperation and participation of the United States of America and various of its agencies and instrumentalities, which have also pursued policies, practices, customs and usages of purposeful racial segregation, all of which individually and in combination have caused and continue to cause severe racial segregation of black school children and teachers throughout the St. Louis metropolitan area. All defendants in this case have, with segregative intent and with profound segregative impact, created and directly contributed to the entrenched racially segregated schooling which characterizes the total St. Louis community. In addition to the

racially discriminatory policies, practices, customs and usages of the defendant educational authorities (State defendants and school district defendants), reciprocally interrelated, racially discriminatory governmental housing and land-use policies and practices, and racial discrimination in the private sector spawned and supported by such public policies and practices, including those of the State defendants, are also substantially and directly responsible for the massive school and residential racial segregation which characterizes the St. Louis metropolitan area.

The Pre-Brown Metropolitan-Wide Dual System

22. Prior to the Civil War the defendant State of Missouri prohibited altogether the public education of black children. For a period of 90 years after the Civil War, until the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* the State defendants and school district defendants and their predecessors, pursuant to the explicit command of state constitutional and statutory law, operated a system of public education in the St. Louis metropolitan area and throughout the State that was completely segregated along racial lines, and which enforced upon black children unequal education and unequal educational opportunities.

23. The racially dual system of public schooling described in the preceding paragraph operated hand-in-glove, in a reciprocal interrelationship, with a similar racially dual system of housing (*see* ¶¶ 28-30, *infra*) which prescribed areas for the occupancy of blacks only (the largest such areas being prescribed in the City of St. Louis) and preserved the remainder of the metropolitan area for the occupancy of whites only. Wherever black persons were so allowed to reside, they were uniformly required to attend schools for blacks only, often at great inconvenience and always in a racially unequal fashion. During this period, for example, the State legislatatively created a black high school district in St. Louis County, expressly providing for the inter-district transfer of black children, and later authorized county

boards of education to pay the tuition costs of black students transferred to black schools in different school districts.

24. Prior to the Supreme Court's 1954 *Brown* decision, the State defendants and school district defendants and their predecessors, acting in concert and individually, pursued a policy of strict racial segregation between and among school districts in the St. Louis metropolitan area. Pursuant to this *de jure* policy, the State defendants and school district defendants provided schools for the education of black pupils only in certain school districts, while other school districts with schools for whites only were required to, and did, transfer their black students across district, county, and city lines to districts with schools designated for the education of blacks only. This racially dual system of public education was established and operated under color of and pursuant to state law on a metropolitan-wide basis without regard to the jurisdictional lines of the various agencies, instrumentalities, and political subdivisions of the State who are defendants herein.

25. By the time of the *Brown* decision black school-age children were residing in at least 27 of the school districts in the three counties and the City of St. Louis included in the St. Louis metropolitan area. Yet, only five of these districts operated high schools for the education of black children, while the remainder provided no high school educational opportunities for blacks within their jurisdictional areas. In addition, six of the districts with black school-age children did not even operate elementary schools for the education of black children. Black school-age children residing in school districts with no black high schools and/or elementary schools were transferred to black schools in the City of St. Louis, other counties, or other defendant school districts within their own county; lived away from home with relatives or others in districts which provided schools for black children; or were discouraged altogether from attending public school.

26. The State defendants and school district defendants arranged, supported, managed, supervised, and funded the pre-*Brown* dual system, including the inter-district segregative student transfers in the St. Louis metropolitan area described in the preceding paragraphs. State funds were earmarked for the creation and maintenance of segregated schools, with the State funding educational services on a racially segregated basis and in a manner that disadvantaged black students, black faculty, black schools, and black school districts in the St. Louis metropolitan area. Black schools and black school districts were maintained at a level of quality that was grossly inferior to that of white schools and white school districts.

27. Prior to *Brown* the State and School District defendants also required total racial segregation in the assignment of faculties, so that black schools in the metropolitan area had only black faculties and white schools had only white faculties. For many years the State and School District defendants compensated black faculty members, solely because of their race, at a lower rate than white faculty members were paid.

28. Also prior to the 1954 *Brown* decision, the State defendants and the housing and local government defendants and their predecessors, operating in reciprocal interrelationship with the policies and practices of racially dual schooling described above, participated in the creation and perpetuation of the above-described dual metropolitan area-wide system of public education by requiring and encouraging racial segregation in residential housing throughout the metropolitan area. This was accomplished through municipal ordinances requiring mandatory residential segregation by race, state-court enforcement, sanction and encouragement of racially restrictive covenants forbidding the sale of specified properties to black persons, the recording of such covenants throughout the metropolitan area by state and local officials, and the operation of conventional public housing in the metropolitan area on a racially segregated basis.

29. From the time of the first national housing programs in the 1930's, the official policies and practices of racial residential segregation described in the preceding paragraph were reinforced and exacerbated by the intentionally segregative policies and practices of the federal government (through the federal Department of Housing and Urban Deveopment, the Federal Housing Administration, the federal Veteran's Administration, the Interstate Highway Program, and other present and predecessor federal agencies), which had a severe segregative impact, both directly and through the federal government's highly influential leadership role in the nation's housing market, on the creation, maintenance and perpetuation of this process of ghettoization.

30. The discriminatory housing and land-use policies described in the two preceding paragraphs have worked in lock-step with the segregative policies and practices of state and local school authorities (*see* ¶¶ 22-27, *supra*) to create, perpetuate and exacerbate racially segregated schooling in racially segregated neighborhoods throughout the St. Louis metropolitan area. These intentionally segregative policies and practices have contained black persons in the St. Louis metropolitan area to totally segregated neighborhoods and schools in central and north St. Louis and contiguous suburban communities (which have been transformed into black areas by the same expanding process of racial containment and ghettoization), as well as a few historic county areas set aside for blacks, while parts of south St. Louis and the substantial remaining parts of the St. Louis metropolitan area have been rigidly preserved for residence and schooling for whites only.

31. The State defendants and the housing and local government defendants have engaged in other forms of official racial discrimination which have fostered and reinforced the racially dual system of public education in the St. Louis metropolitan area prior to *Brown,* including racial discrimination in public and private employment; racially discriminatory annexations

and de-annexations; racial segregation of public facilities and accommodations; and racially discriminatory law-enforcement policies and practices. These actions had the purpose and effect of confining, and of re-enforcing the confinement of, black persons to prescribed residential communities and facilitating the complete racial segregation of public schools throughout the metropolitan area.

Post-*Brown* Perpetuation and Exacerbation of the Metropolitan-Wide Dual System of Public Education

32. Although the above-described policies and practices and their pronounced segregative impact were declared unconstitutional by the Supreme Court in its 1954 decisions in *Brown* v. *Board of Education* and *Bolling* v. *Sharpe,* the defendants have failed and refused to engage in the affirmative corrective action necessary to uproot the widespread, deeply entrenched impact of their pre-*Brown* segregative conduct. On the contrary, these defendants have continued in the post-*Brown* era to engage in affirmative segregative conduct, as well as to pursue policies and practices which have had the effect of continuing and greatly expanding the racially dual metropolitan-wide system of public education. This continued intentional segregation and the persistent failure and refusal to take affirmative remedial action have compounded, exacerbated, further ingrained and massively expanded government-imposed school segregation in the St. Louis metropolitan area. The defendants have had numerous opportunities and ample power to remedy this profound constitutional violation, but instead by their conduct they have continued and expanded the violation and all of its effects and ramifications.

33. As established by the adjudicated facts of this case, the State and St. Louis Board defendants engaged in a wholesale violation of the affirmative remedial obligation imposed upon them by the Fourteenth Amendment as construed in the *Brown* decision by perpetuating and magnifying that part of the area-

wide dual system existing in the City of St. Louis, which contained at the time of *Brown,* as it does now, a substantial majority of the black people in the St. Louis metropolitan area. By virtue of the orders of this Court and the Court of Appeals, the State defendants and the St. Louis Board have recently been required to undertake affirmative remedial steps to eradicate the City of St. Louis part of the metrcpolitan dual system. Nevertheless, it is the express finding of this Court and it is a fact that the court-ordered remedy falls far short of liquidating the City of St. Louis part of the metropolitan dual system. Moreover, because of the prolonged delay in taking affimative remedial action, the greatly increased magnitude of the dual system, and the extensive inter-district segregative effects of the City part of that system, no remedy confined to the City of St. Louis is capable of fulfilling the affirmative constitutional obligation of the State and other defendants, including the St. Louis Board, to dismantle the State's metropolitan dual system root and branch.

34. In recent years the St. Louis Board has proposed, and by its recently filed cross claim now formally seeks, an inter-district desegregation remedy designed to dismantle this dual system. The State and some of the other defendants, most recently within the past month, have persistently refused and rejected the St. Louis Board's proposals. Each instance of such failure and refusal to fulfill their affirmative duty thus continues the violation of the Fourteenth Amendment on the part of the State and other defendants. Similar opportunities have been presented to the Missouri legislature, and it has similarly failed and refused to take action to fulfill the State's affirmative Fourteenth Amendment duty.

35. The State defendants and school district defendants have continued to fund, with substantial federal financial assistance since 1965, the perpetuation and exacerbation of the racially dual system of public schools in the St. Louis metropolitan area.

36. The most serious of the failures and refusals to engage in an affirmative remedy by the State and school district defendants, and their predecessors, are the numerous opportunities for school district consolidation and reorganization which would have provided the framework and means for eradicating the metropolitan dual system. Instead, the extensive program of school district consolidation and reorganization that has been carried out during the post-*Brown* era has exacerbated, rather than alleviated, the racially dual system of public schooling extant in the metropolitan area. Of all of the defendant school districts, only the St. Louis school district has jurisdictional lines that are related to political subdivision lines. Every municipality has territory in more than one school district, and at least one school district encompasses parts of two counties. The isolation of the St. Louis school district by confining it to the limits of the City of St. Louis is a further breach of the State defendants' affirmative constitutional duty.

37. With respect to the Special School District of St. Louis County, plaintiffs incorporate by reference their amended and supplemental complaint filed against the Special District pursuant to order of this Court entered 12 September 1980.

38. The State defendants and the housing and local government defendants have never undertaken and are not now undertaking any action to counteract the entrenched racial residential and school segregation in the St. Louis metropolitan area caused by their discriminatory conduct reciprocally reinforcing the dual system maintained by the defendant school authorities. Moreover, the State defendants and the housing and local government defendants have continued to pursue segregative housing policies and practices that have restricted and continue to restrict the location of black persons to prescribed residential communities in the metropolitan area. Such policies and practices have perpetuated and exacerbated the racially dual system of public education and have frustrated school desegregation efforts in the St. Louis metropolitan area, including those ordered

by this Court. The United States and the Community Development Agency of the City of St. Louis have recently submitted to the Court outlines of proposed remedial plans, the development of which was previously ordered by the Court for the purpose of insuring that the future operation of federally-assisted housing programs would facilitate, rather than continue to retard, school desegregation. The plan outlines submitted pursuant to the Court's order are wholly inadequate to redress the substantial contribution of the past discriminatory operation of these programs to the perpetuation of the area-wide dual system.

39. The dual school system complained of herein extends throughout the St. Louis metropolitan area, resulting from the enforcement of intentional inter-district racial school and residential segregation, and from the inter-district effects of unliquidated intra-district intentional segregation. The defendants have failed and refused to dismantle this system, and their failure and refusal will continue unless they are ordered otherwise by this Court.

Causes of Action

40. The defendants named herein and their predecessors and instrumentalities have denied and deprived plaintiffs and their class of their federal constitutional and legal rights, privileges and immunities, as follows:

(a) by creating, operating, financing and perpetuating a racially dual area-wide system of public education pursuant to policies, practices, customs and usages of intentional racial segregation and discrimination in violation of the equal protection guarantees of the Thirteenth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983; in violation of the rights secured by 42 U.S.C. §1981 and the Thirteenth Amendment to the full and equal benefits of all laws and proceedings for the security of persons and property as are enjoyed by white citizens; in violation of the rights secured by 42 U.S.C. §1982 to the same right to hold and enjoy real property as is en-

joyed by white citizens; and in violation of the right secured by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*, to be free of racial discrimination in the operation of federally funded programs;

(b) by knowingly continuing said violations of constitutional and legal rights and failing to take affirmative remedial steps to convert to a metropolitan-wide system of public education freed of the vestiges of government-imposed racial segregation and discrimination, as required by the provisions of the federal constitution and laws cited in subparagraph (a);

(c) by refusing and failing to afford plaintiffs and their class effective protection from such government-fostered and -imposed racial discrimination.

Prayer for Relief

41. The public schools of the St. Louis metropolitan area have always been and are now severely segregated on the basis of race by reason of the unconstitutional conduct of the defendants herein, and their predecessors. Unless enjoined by order of this Court, the defendants will continue to fail and refuse to dismantle the unconstitutional dual system of public education in the St. Louis metropolitan area. There is no adequate remedy at law.

42. WHEREFORE, the Caldwell plaintiffs-intervenors, on their own behalf and on behalf of all those similarly situated, pray the Court as follows:

(a) Enter a declaratory judgment that the policies, practices, customs and usages of the defendants complained of herein are unconstitutional and unlawful;

(b) Enter a permanent injunction enjoining defendants, their agents and instrumentalities, and all those in active concert or participation with them, to develop and implement comprehensive remedial plans designed to eliminate, through equitable (including two-way) desegregative pupil and teacher reassignments, necessary governance reorganization, desegregative housing programs, and/or any other effective means, at the earliest practical date all vestiges of government-imposed racial segregation and discrimination from the public schools in the St. Louis metropolitan area, and barring such segregative conduct in the future;

(c) Award the plaintiffs-intervenors their costs, including reasonable attorneys' fees and out-of-pocket expenses, and such other and further relief as justice and equity demand.

Dated: 16 January 1981

Respectfully submitted,

/s/ Thomas I. Atkins
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APPENDIX G

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Craton Liddell, et al,

and

Earline Caldwell, et al,

City of St. Louis,

Janice Adams, et al,

and

Mary Puleo, et al,

United States of America,

Appellees,

vs.

Board of Education of the City of St. Louis, et al,

and

State of Missouri, et al,

Special School District of St. Louis County,

St. Louis County, et al,

and

Affton School District, et al,

Appellants

Appeals from the United States District Court
for the Eastern District of Missouri.

No. 81-1828 —
Adams Group

No. 81-1940 —
State of Missouri and Officials

No. 81-2003 —
St. Louis City Board of Education

No. 81-2042 —
Caldwell Group

No. 81-2043 —
St. Louis City Board of Education

No. 81-2086 —
Riverview Gardens School District

No. 81-2127 —
Hazelwood School District

No. 81-2134 —
St. Louis County Governmental Officials

No. 81-2135 —
Mehlville Board of Education

No. 81-2136 —
Lindbergh and Affton School Districts

No. 81-2137 —
Rockwood Board of Education

No. 81-2138 —
Webster Groves Board of Education

No. 81-2139 —
Parkway School District

No. 81-2140 —
Ladue School District

Submitted: January 11, 1982

Filed: February 25, 1982

Before, HEANEY, BRIGHT and STEPHENSON, Circuit Judges.

HEANEY, Circuit Judge.

Questions concerning the integration of the public schools of the City of St. Louis have been before this Court on numerous occasions and before the United States Supreme Court three times.[1] Pursuant to our opinions and those of the United States District Court for the Eastern District of Missouri, some steps toward the goal of an integrated school system have been taken. The previously all-white schools in South St. Louis have been integrated. Some integrated educational programs and opportunities have been provided to the 30,000 black students who still attend all-black schools, and efforts are being made to improve the quality of education in those schools. A number of integrated magnet schools have been opened. A start has been made toward integrating the vocational education programs of the city and county schools. In addition, a modest beginning toward voluntary interdistrict desegregation has been undertaken. As in many school districts with a long history of racial segregation, progress has been slow. Firm direction, however, has been provided by former Chief Judge James Meredith and Judge William Hungate.

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[1]We have filed three major opinions in this litigation: *Liddell v. Board of Education,* Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735 (8th Cir. Feb. 13, 1981), *cert. denied,* 50 U.S.L.W. 3447-3448 (Nov. 30, 1981) (*Liddell II*); *Adams v. United States,* 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied,* 449 U.S. 826 (1980) (*Adams*); and *Liddell v. Caldwell,* 546 F.2d 768 (8th Cir. 1976), *cert, denied,* 433 U.S. 914 (1977) (*Liddell I*).

We have also filed two orders which are referred to in this opinion. *Liddell v. Board of Education,* Nos. 81-1184, et al (8th Cir. Dec. 2, 1981) (order) (*Liddell IV*); and *Liddell v. Board of Education,* Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735 (8th Cir. Mar. 19, 1981) (order) (*Liddell III*).

The shortened reference form designated in the parenthetical following each citation will be utilized for subsequent citations in our opinion.

The major questions presented in these appeals may be grouped into four categories:

(1) *Desegregation Costs.* Did the district court err in determining the share of the 1980-1981 costs for desegregating St. Louis schools that the State of Missouri was obligated to pay; in determining that the state would be required to pay one-half of the actual desegregation expenses in the 1981-1982 budget; and in determining that the state was required to pay certain costs relating to the implementation of the voluntary interdistrict plan.

We hold that it did not err in any of these rulings. We urge the State of Missouri to participate in the budget-making process so that the annual budget can be determined on a cooperative rather than an adversary basis.

(2) *Vocational Education.* Did the district court err in adopting a plan for the merger of vocational educational programs of the city and county schools and in requiring the state to pay certain costs relating to the merger.

We hold that it did not and emphasize the necessity of closely monitoring the plan to ensure that the integration goals set forth therein are promptly and fully met.

(3) (a) *Joinder of Suburban Districts and County Units of Government.* Did the district court err in joining St. Louis County, certain county officials and seventeen suburban schools in St. Louis County as parties-defendant in the pending case and in postponing a decision as to whether other suburban school districts and governmental units should be joined.

We hold that we are without jurisdiction to consider these questions.

(b) *The 12(c) proceedings and interdistrict relief.* Did the district court err in severing the issue of mandatory interdistrict

relief from the pending paragraph 12(c)[2] proceedings and in requiring that the latter proceedings go forward immediately even though questions relating to the liability of suburban school districts and county defendants have not been adjudicated and even though no suburban school districts are parties to the 12(c) proceedings.

We hold that the severance order is not presently appealable, but suggest that the interdistrict liability proceedings be temporarily postponed until after the district court has entered its order in the pending 12(c) proceeding and that they go forward promptly thereafter. In so holding, we note that relief granted in present 12(c) proceeding must be based on the established liability of the state defendants and the Board of Education of the City of St. Louis. We emphasize that suburban school districts that voluntarily participate in efforts to integrate city schools will not, by such participation, admit liability or waive any right that they may presently have to be excluded from a plan of mandatory interdistrict desegregation.

(4) *Recusal.* Did Judge Hungate err in failing to recuse himself from conducting further proceedings in the intradistrict aspects of this case, including the paragraph 12(a)-12(d) proceedings, or in recusing himself from its interdistrict component.

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[2]In its order of May 21, 1980, the district court directed in paragraph 12(c), that the state defendants and city board develop and submit a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school desegregation in the City of St. Louis and St. Louis County. *Liddell v. Board of Education,* 491 F.Supp. 351, 353 (E.D. Mo. 1980). We expressly affirmed paragraph 12(c) both as originally entered, *Liddell II,* slip op. at 19-20, and as subsequently amended by the district court, *Liddell III,* slip op. at 13-17. Paragraph 12(c), as we subsequently observed, "essentially requires the development and submission of proposed interdistrict desegregation plans * * *." *Liddell IV,* slip op. at 8.

Paragraph 12(c) apparently has confused many parties. As a result, we discuss that provision in Part (3) (b), *infra.*

We hold that we are without jurisdiction to entertain an appeal on these recusal issues and we deny mandamus relief. We observe, however, that no legal basis appears to support Judge Hungate's recusal from either phase of the case. This case was originally assigned to Judge Hungate by Chief Judge H. Kenneth Wangelin. On remand, the Chief Judge may, if he deems it in the interests of judicial administration, reassign Judge Hungate to the interdistrict phase of the case or assign that phase to another judge.

(1) *Desegregation Costs.*

Two appeals have been filed with respect to payment of the costs of integrating the city schools. In No. 81-1940, the state renews its contention that it cannot be required to pay the costs of implementing a 12(a) plan for voluntary pupil transfers between the city schools and those of St. Louis County. It also asserts that the district court erred in approving the city school budget for Year Two of the desegregation plan and in requiring it to pay one-half of the desegregation costs for that year. In No. 81-2003, the Board of Education of the city schools challenges the district court's determination with respect to the costs of desegregation that are to be borne by the state for the 1980-1981 school year.

(a) *The State's Liability Under 12(a).*

We held in *Adams* that the state had substantially contributed to the segregation of the public schools of the City of St. Louis.[3] No appeal was taken from that decision by the state. That decision has been settled and will not be reopened. *See generally United States v. United States Smelting, Refining and Mining Co.*, 339 U.S. 186, 198 (1950); 1 B. Moore's Federal Practice ¶ 0.404, p. 401-405 (1980). In addition, we specifically sustained

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[3] *Adams, supra,* 620 F.2d at 1294 & n.27, 1295 & n.28. *See also Liddell II,* slip op. at 28.

the validity of paragraph 12(a) of the district court's order of May 21, 1980, in our February 13, 1981,[4] decision. The Supreme Court denied certiorari review of that decision on November 30, 1981.[5]

Paragraph 12(a) is entirely enforceable against the state defendants; they are primary constitutional wrongdoers and, therefore, can be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district. *Hills v. Gautreaux,* 425 U.S. 284 (1976).

(b) *The Desegregation Budgets (1980-1981 and 1981-1982).*

In our February 13, 1981, decision, we affirmed the district court's plan for integrating city schools. *Liddell II,* slip op. at 10, 12-25. We also affirmed the district court's order which required the state to pay one-half of the actual costs of implementing that desegregation plan in four equal installments. *Id.* at 28-29. These determinations are the law of the case.

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[4]*Liddell II,* slip op. at 19. Paragraph 12(a) directed the state defendants and city board to "make every feasible effort" to work out a voluntary plan of interdistrict pupil exchanges between the city school district and the suburban districts. *Liddell v. Board of Education, supra,* 491 F.Supp. at 353. *See also Liddell III,* slip op. at 13-17; *Liddell II,* slip op. at 19.

Paragraph 12(a) was designed to help remedy the proven unconstitutional segregation of the city schools as part of and in conjunction with the overall desegregation plan which we approved in *Liddell II.*

[5]*See* n.1, *supra.* In its petition for a writ of certiorari, the state contended in part that the district court exceeded its authority in ordering the preparation of a voluntary interdistrict pupil exchange plan (paragraph 12(a)) because an interdistrict violation was neither pleaded nor proven and it should not be held responsible to fund an interdistrict plan on the basis of an intradistrict violation.

The desegregation plan was implemented by the city board at the beginning of the 1980-1981 school year. The estimated cost of implementing the plan for the 1980-1981 school year was just over twenty-two million dollars and the district court approved a budget in that amount. *Liddell v. Board of Education,* 491 F.Supp. 351, 356 (E.D. Mo. 1980).[6] The actual cost for that school year was less than budgeted—approximately nineteen million dollars. The city board contends that the state refused to pay its full one-half share of these costs. It asserts that the district court erred in failing to grant the city board's motion to compel the state to pay the city board an additional $1,042,000.[7] *See Liddell v. Board of Education,* No. 72-100C(4) (July 14, 1981) (H(237)81).[8] The city board also contends that "the bulk" of the programs for which expenditures were made—and to which the state objects—"were specifically mandated by the desegregation plan, with the few remaining items being required, without dispute, by necessary implication." Accordingly, it submits that the expenditures at issue are a legitimate part of the total cost of integration and the state should be required to pay its full one-half share.

The state concedes that it forwarded a fourth-quarter payment of $894,668.50 to the city board instead of the $1,324,668 requested. It argues, however, that the specific expenditures it contests "were not included in the 1980-1981 budget approved by the [district court] * * * on May 21, 1980." It also contends that the equities of this case are in its favor because "[s]ubstan-

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[6]We affirmed the district court's decision in *Liddell II.*

[7]The $1,042,000 figure was supplied by counsel for the city board at oral argument. The district court's July 14, 1981, order (H(237)81) stated that $1,452,000 was the sum in dispute.

[8]The district court subsequently denied the city board's motion to reconsider the July 14, 1981, order and the city board's supplemental motion to compel on August 5, 1981. *Liddell v. Board of Education,* No. 72-100C(4) (E.D. Mo., Aug. 4, 1981) (H(294)81 and H(301)81).

tial portions of the programs in question were funded from in kind contributions from private and governmental sources." The state also charges that the city board's financial figures contain unexplained discrepancies and that the city board's bookkeeping evidences "sloppiness and inefficiency." In short, the state contends that the district court's rulings concerning the funding of the Year One (1980-1981) desegregation budget were well within its discretion.

The city board's reply brief correctly argues that the sole fiscal issue for Year One is to determine the numerical figure which constitutes one-half of the actual costs ($19,152,503) of the 1980-1981 desegregation plan.[9] It asserts that instead of paying its one-half share of $9,576,251, the state paid only $8,530,000.

The district court refused to order the state to pay a larger share of the 1980-1981 budget. It stated:

> To determine proper allocation of the costs of desegregation programs, even though supported by the Danforth Foundation and other contributors, the City Board's in haec verba interpretation of Judge Meredith's order and appeals court's opinion is literally correct. In exercising its powers in equity, however, the Court is reluctant to impose such a restrictive application of funding orders.
>
> Because the expenditures for budget items captioned Other Programs have been offset by the Danforth Foundation and other contributors, the Court finds that the actual cost to the City Board of implementing the desegregation plan has been reduced by public and private contributions.

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[9] *See Liddell IV,* slip op. at 7. The state must pay one-half of the actual desegregation costs under this plan. *E.g., Liddell II,* slip op. at 28-29.

Judge Meredith's order of May 21, 1980, required the state to pay one-half of the cost of implementing and operating the city board's desegregation plan for the year 1980-1981. Our opinion of February 13, 1981, affirmed that order and emphasized that only actual costs were to be included in the total.[10] Both this Court and the district court were aware of the fact that the federal government would pay a portion of the total costs and that such payments would serve to reduce the city school board's share of the total and not the state's share. Neither Judge Meredith nor this Court considered or discussed the possibility that others, including individuals, corporations, associations or foundations, would make contributions in kind or cash toward the costs of implementing or operating the desegregation plan. In logic, had this Court considered this possibility, it would have deemed such contributions to be comparable to the federal grants and would have directed that such contributions serve to reduce the city school board's, rather than the state's, share of the desegregation costs. But we did not consider that possibility. We are, therefore, reluctant to hold that the district court abused its discretion in giving the state the credit that it did in determining what constituted the state's one-half share for the first budget year, particularly since specific budget items are disputed.

Lest there be any misunderstanding, however, we make it clear that for budget Year Two (1981-1982) and succeeding budget years, the state is required to pay one-half of the *total actual costs* of implementing and operating the desegregation plan. The state's share shall not be reduced by grants or contributions received by the city board from other public or private agencies, individuals, associations or corporations to the extent that such grants or contributions are used to defer actual costs which have been approved by the district court in the budgetary process or thereafter. The district court, of course,

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[10] *Liddell II*, slip op. at 29.

retains discretion to determine which actual costs are reasonably necessary for the implementation or operation of the plan to desegregate the city schools.

One further point should be made. The district court and this Court are ill-equipped to determine what the fair, reasonable and actual desegregation costs are. The state and the city board, on the other hand, have experts who regularly and routinely work on such matters. They should be involved in the budget-making process at an early date so that disputes can be resolved on a cooperative, rather than an adversary, basis.

The federal government, the state and the city school board all face a period of budgetary restraints. It will require maximum cooperation among them, as well as continued private contributions, if the constitutional rights of the black children of St. Louis are to be fully protected. We trust that such maximum cooperation will be forthcoming from the parties to this litigation. We commend those in the private sector who have given and will give of their time, money and resources to this most important endeavor.

(2) *Vocational Education.*

(a) *Background.*

On May 21, 1980, the district court made the following finding of fact:

> The existing dual system of vocational education split between the City of St. Louis and St. Louis County is neither educationally sound or administratively efficient. These systems, established in 1965 and 1967, are further evidence of the continuing failure of the State to take any effective measures to disestablish the dual system in the State. The State has the power to effectively merge these systems. Its failure to exercise that power is part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system in once formally mandated.

Liddell v. Board of Education, supra, 491 F.Supp. at 358. In a separate provision of its May 21, 1980, decision, paragraph 12(b), the district court ordered the state defendants and the St. Louis City Board of Education

> [t]o develop and submit to the Court * * * a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in 1981-82 school year.

Id. at 353.

On February 13, 1981, this Court affirmed both the districts court's factual finding and its paragraph 12(b) order. *See Liddell II,* slip op. at 19, where we held:

> Section (b) of paragraph 12 is also consistent with the district court's responsiblity to order a remedy for existing constitutional violations. The district court specifically found that the State of Missouri's establishment and maintenance of the separate Special District for vocational education was "part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." 491 F.Supp. at 358. Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special District has now been joined as a party defendant in this lawsuit.[11] We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year.

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[11]The Special School District of St. Louis County (SSD) was joined as a party defendant on September 12, 1980. *See, e.g., Liddell v. Board of Education,* No. 72-100C(4), at 2 (E.D. Mo. June 11, 1981)(H(181)81).

Counsel for the state conceded at oral argument that the district court expressly found that the state committed an inter-district constitutional violation by failing to merge the segregated city-county vocational programs. Although the state disagrees with that district court finding, we adhere to our February 13, 1981, affirmance of that finding and our approval of paragraph 12(b).[12]

Persuant to the rulings by the district court and this Court, the St. Louis City Board of Education, the state defendants and the Special School District of St. Louis County (SSD) submitted proposed plans to remedy the segregated vocational education programs in the city and SSD. *Liddell v. Board of Education,* No. 72-100C(4), at 3 (E.D. Mo., June 11, 1981) (order designated as H(181)81). The districts court's June 11, 1981, order (H(181)81) provides the following progression of events. On March 4, 1981, the district court set a hearing to begin on May 11, 1981, to consider the vocational education issues and establish pretrial procedures. The court subsequently specified an agenda and delineated the issue and evidence presentation schedule to be followed at the May 11, 1981, hearing. On May 8, 1981, the SSD filed another vocational education proposal which prompted extensive negotiations among the parties. The negotiations resulted in "a proposed consent decree supported by a majority of the parties and also a [proposed vocational education] plan agreed to by all the parties except the intervening * * * Adams group plaintiffs." Along with a proposed fund-

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[12]We also note parenthetically that in September of 1978, the Office of Civil Rights (OCR) of the United States Department of Health, Education and Welfare found that the state's department of elementary and secondary education failed to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, with respect to the St. Louis metropolitan area vocational education programs. The OCR found, inter alia, that establishment of separate city-county vocational service areas did not comply with certain Title VI regulations.

ing order, these documents were submitted to the district court on May 20, 1981.[13]

The district court convened the vocational education hearing on May 11, 1981. At that time, the parties advised the district court that a settlement on the paragraph 12(b) vocational issues was "embarrassingly close." At the parties' request, the district court deferred holding the 12(b) hearing and as the settlement negotiations continued, the district court continued the 12(b) hearing on a day-to-day basis. The negotiations culminated in a written proposal and, on May 20, 1981, the parties submitted not only their consent decree, but also a proposed vocational education plan and funding order to the district court.

On the following day, a hearing was conducted during which the district court admitted, without objection, certain stipulations of fact and various exhibits offered by the Untied States. After all parties were allowed an opportunity to be heard, the district court issued a separate funding order and made the proposed consent decree and 12(b) plan part of the record.[14]

On May 27, 1981, the parties were notified that a hearing on the proposed paragraph 12(b) consent decree would begin on June 9, 1981. A notice to the Liddell class members was issued on that same day and the district court granted leave to interested individuals to request permission to appear in support

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[13]More specifically, the proposals were submitted by the state, SSD, United States, NAACP—Caldwell plaintiffs and City of St. Louis. The district court signed the consent decree on May 21, 1981. *Liddell v. Board of Education,* No. 72-100C(4) (E.D. Mo. May 21, 1981) (order designated as H(132)81).

[14]The funding order was independently drafted by the district court and was not a part of the parties' other agreements and submissions. The funding aspects of the vocational education programs are separately discussed in part (2) (c), *infra.*

of or in opposition to the proposed decree or to file written memoranda stating their views.[15] The Adams group filed written objections to the 12(b) consent decree, the Liddell group orally expressed opposition to the consent decree, three letters from the public were received by the district court and the University City School District filed a memorandum commenting upon the parties' 12(b) proposal. The SSD and United States filed memoranda in support of the consent decree on June 2 and June 8, 1981, respectively.[16]

The district court summarized the submitting parties' positions thus:

> The parties have, in numerous filings with this Court, the Court of Appeals, and the United States Supreme Court, stated their position as to the facts and law regarding the issues. In the proposed consent decree submitted to the Court, the parties recited that
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> > By consenting hereto no party retracts its previous positions or concedes that its respective positions are in any way erroneous. However, the parties being desirous of implementing a solution to the issues concerning paragraph 12(b) of the May 21, 1980 order without the expense of litigation, have agreed to the entry of the decree, and the Court being of the opinion that the entry of this decree will effectuate federal law * * *

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[15]Even though the district court had signed the consent decree on May 21, *see* note 13, *supra,* it continued to treat the submissions as proposed, and eventually incorporated the terms of the submissions into its own order. *See* text at 17 *infra.*

[16]*See Liddell v. Board of Education,* No. 72-100C(4) (E.D. Mo. 1981) (H(150)81, a three-page memorandum in support filed by the SSD; and H(166)81, a twenty-five page memorandum in support filed by the United States).

> The City of St. Louis, the United States, the Caldwell plaintiffs-intervenors, and the Special School District support the consent decree without equivocation. The Board of Education of the City of St. Louis supports the decree in accordance with the funding order entered on May 21, 1981. The State has executed the consent decree and approves the vocational plan, but is critical of the funding order. The Liddell plaintiffs approve the plan, but withheld approval of the consent decree, questioning the adequacy of the jurisdictional statement in the first paragraph. The intervening plaintiffs, Adams, object to the plan and the decree.

Although the district court expressed reluctance to enter an order and judgment as a "consent decree" because the Adams group objected to the parties' 12(b) agreement, it expressly adopted the vocational education plan, which had been agreed to by seven of the eight parties, "as its [the district court's] plan to desegregate the vocational schools in the City of St. Louis and St. Louis County." The court simply appended the parties' 12(b) plan, in its entirety, to its June 11, 1981, order and specifically made the plan a part of that order. The district court also held that the parties' vocational education plan was fair, reasonable and adequate under all the circumstances and that it satisfied consitutional standards. It "adopt[ed] the [parties' vocational education] plan as its own" and ordered the SSD, the St. Louis City Board of Education and the State of Missouri to implement the plan. The district court's June 11, 1981, order to which the parties' vocational education plan was attached also contains various other provisions, but only those directly relevant will be subsequently discussed.

(b) *Challenges to District Court's Vocational Education Orders.*

We previously held that the Adams group may challenge the 12(b) plan adopted by the district court because that group never endorsed the underlying consent decree and consistently

preserved their objections to the parties' 12(b) plan. *Liddell IV,* slip op. at 5-6. We also allowed the state to "argue whether the financial obligations imposed upon it with respect to the vocational education plan are inconsistent with our previous mandates." *Id.* at 6. We dismissed the attempts by the state and SSD to escape their endorsement of the underlying consent decree and 12(b) plan. *Id.* at 4-6. Therefore, this part of the opinion involves two major issues: (1) the validity and constitutional sufficiency, on the merits, of the parties' consent decree and 12(b) plan which was adopted by the district court, and (2) the correctness of the district court's 12(b) funding orders.

We have carefully reviewed the May 21, 1981, consent decree drafted by the parties, compared it with the district court's June 11, 1981, order and conclude that the latter order adopted the consent decree without significant modification. The June 11, 1981, order tracked the consent decree's format throughout, but also: (1) added certain quotations from previous court opinions; (2) fleshed out and updated the procedural history culminating in the consent decree and 12(b) plan; (3) discussed the general legal principles applicable to consent decrees; (4) held that the 12(b) plan was fair, reasonable, adequate and constitutionally sufficient; (5) ordered the SSD, city board and state to file an interim progress report by July 15, 1983; and (6) added various funding provisions. These changes and additions, along with several nonsubstantive editorial changes made by the district court, simply were not significant. Therefore, the parties which consented to the entry of judgment via their endorsement of the consent decree have "no status to appeal." *Stanford v. Utley,* 341 F.2d 265, 271 (8th Cir. 1965). *See also Liddell IV,* slip op. at 5-6 (and citations therein).

Having so concluded, we turn to the Adams group's substantive challenges to the merits of the 12(b) plan.[17] Basically, the

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[17]Various parties argue that the Adams group lacks standing to challenge the 12(b) plan. In light of the group's 1977 intervention and consistent participation in all phases of this litigation to date, we cannot agree.

Adams group contends that implementation of the 12(b) plan will not desegregate the predominantly black city vocational schools and the predominantly white SSD. They argue that rather than being concrete, the 12(b) plan is merely "a letter of intent to try to work out details at a later date." The Adams group asserts that the Metropolitan Coordinating Committee (MCC), which, under the 12(b) plan, would be created and given primary responsibility for enforcing the plan's desegregation requirements, would be actually answerable to no one and be a "toothless tiger" without any real power to effectuate constitutionally required desegregation of the metropolitan area vocational programs.

The Adams group cites numerical statistics which purportedly reveal that "white families who are desirous of obtaining vocational education for their children [would be encouraged] to move out of the City into the suburbs." They contend that the plan's natural result will be to resegregate the St. Louis metropolitan area and that fewer students will have the opportunity to obtain vocational training than are currently enrolled in such programs. Finally, the Adams group argues that the plans' contemplated yearly desegregation goals for vocational educational programs[18] will be impossible to achieve.

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[18]The 12(b) plan establishes the following specific racial distribution goals: *Year One* (1981-1982) — 85% white and 15% black in Special District Technical Schools. *Year Two* (1982-1983) — (1) 82% white and 18% black in Special District Technical Schools; (2) initiate unduplicated programs at the city's O'Fallon Technical High School with a goal of 65% white and 35% black, but allowing a ten percentage point differential either way; (3) open the new West County Technical School and initiate unduplicated programs with racial goals of 65% white and 35% black, but allowing a ten percentage point differential either way; and (4) 10-15% white and 85-90% black at O'Fallon. *Year Three* (1983-1984) — (1) 78% white and 22% black in Special District Technical schools; (2) 50% white and 50% black at O'Fallon; (3) initiate three additional unduplicated programs with goals of 65% white and 35% black, but allowing a ten percentage point differential either way; and (4) 50% white and 50% black in

have consisted of St. Louis County, St. Charles County, Jefferson County, and the City of St. Louis. This regional district would have been subdivided into 16 local districts. Four of the 16 local school districts would have included parts of the City of St. Louis.

Implementation of the Spainhower Commission recommendations would have resulted in significant desegregation throughout the St. Louis metropolitan area. The State Education and School District Cross-Defendants did not support the Commission recommendations, and although the Missouri state legislature considered the Spainhower proposals in 1969, they were never approved. The rejection of the Spainhower report had the effect and/or purpose of perpetuating the vestiges of the dual system in place prior to 1954.

(b) From 1948 to 1979, during the period of time that the St. Louis County Board of Education was operating, several proposals were made to consolidate all school districts in St. Louis County. Such a consolidation would have had a significant desegregative effect within the County of St. Louis. It also could have helped to relieve the segregated conditions existing in the City of St. Louis. The St. Louis County Board of Education never approved such a county-wide consolidation. The St. Louis County Board's rejection of these proposals had the effect and/or purpose of promoting and maintaining segregation within the County and the City of St. Louis.

(c) State Education and School District Cross-Defendants rejected other proposed consolidations, including those involving University City and Clayton, with the effect and/or purpose of maintaining segregated conditions within St. Louis County and the City of St. Louis.

express terms of the 12(b) plan if the plan fails to effectively desegregate the metropolitan vocational technical schools by the end of the 1985-1986 school year.[21]

We do not find the Adams group's objections persuasive. First, we do not accept the contention that the 12(b) plan is an agreement to do nothing. The plan mandates a specific yearly progression of events which will result in a racial balance of sixty-five percent white and thirty-five percent black[22] at each of the vocational technical schools which will be operating by the 1985-1986 school year. These goals and the various provisions of the 12(b) plan satisfy constitutional standards. The MCC will have extensive responsibilities and authority in ensuring that the plan is implemented and its goals reached. For example, the MCC has the power to eliminate duplication of programs and may assign students to particular vocational technical schools.

Second, the district court's June 11, 1981, order and 12(b) plan contain various reporting and monitoring provisions. These provisions ensure that the anticipated progress will be made. In addition, the district court expressly retained jurisdiction over the vocational education issues and may take appropriate action at any time sua sponte or upon a motion of any party if implementation of the 12(b) plan does not bring about the anticipated results. Also, and as briefly noted earlier, paragraph sixteen of the 12(b) plan states that the district court,

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[21]In addition, these considerations are distinct from a more fundamental reality: the broad remedial authority vested in the federal courts under the Supremacy Clause to eliminate proven consitutional violations committed by the state.

[22]The plan expressly allows for a ten-point percentage differential either way. While some flexibility is necessary in such planning, the 65% white/35% black goal is a realistic one and should be attained. *See also* n.18, *supra,* for a full description of the 12(b) plan's racial distribution goals.

after the 1985-1986 school year and upon a party's motion after a hearing, "may either order a complete merger of the vocational programs with a unified governing and taxing structure, modify this plan, or adopt any other plan * * * ."

Third, the parties having responsibilities under the 12(b) plan must exercise those responsibilities with the utmost good faith. The parties' negotiations which resulted in the consent decree and 12(b) plan are commendable. We trust that actual desegregation of the vocational education programs in the metropolitan area will be achieved with the same cooperative spirit.

(c) *The District Court's Paragraph 12(b) Funding Orders.*

In our December 2, 1981, order, we allowed the state to "argue whether the financial obligations imposed upon it with respect to the vocational education plan are inconsistent with our previous mandates." *Liddell IV,* slip op. at 6. The district court's finding that the state was constitutionally culpable for failing to disestablish the dual vocational education systems in the city and county[23] was affirmed by this Court and the United States Supreme Court denied the state's petition for writ of certiorari.[24] Under the law of the case doctrine, this finding of culpability must be followed in all subsequent district and appellate proceedings. *See, e.g., Continental Bank & Trust Co. v. American Bonding,* 630 F.2d 606, 608 (8th Cir. 1980); *Houghton v. McDonnell Douglas Corp.* 627 F.2d 858, 864 (8th Cir. 1980).

The district court's June 11, 1981, order provided that funds to meet the commitments of the state defendants to the 12(b)

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[23] *Liddell v. Board of Education,* 491 F.Supp. 351, 358 (E.D. Mo. 1980).

[24] *Liddell II,* slip op. at 19. *See* n.1, *supra.*

approved plan shall be made available by the state defendants.[25] The court expressly recognized that significant start-up costs, outlays for building renovation and additional operating expenses would be necessary to establish vocational programs in ninth and tenth grades at regular comprehensive city high schools.[26] It noted that there were unspent funds earmarked for the 1980-1981 St. Louis Desegregation Budget which had been provided by the state and by the federal government via the Emrgency School Assistance Act (ESAA). Like its May 21, 1981, order, the court directed that one million dollars of the unspent state funds designated for St. Louis desegregation be placed in a separate account to be used for vocational education expenses. It again directed the city board to promptly apply to

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[25]The district court actually considered vocational funding issues on four separate occasions. First, the district court signed a consent decree on May 21, 1981. H(132)81 (described *supra* at 16-17). Paragraph 6 of the decree provided that "[f]unds to meet the commitments of the State Defendants to the [12(b)] plan * " * shall be made available by the State Defendants and the Missouri General Assembly subject to and in compliance with any applicable provisions of law." Because the parties were unable to agree on how the plan would be funded, the district court entered a separate funding order on May 21, 1981. H(134)81. This second attempt to address funding issues was independently drafted by the district court and contained funding provisions that were substantially incorporated in the district court's third order, dated June 11, 1981. The district court entered the final vocational funding order that is relevant to our consideration on June 24, 1981, in response to the state defendants' motion to reconsider the previous funding orders. *See* text accompanying notes 29 & 30, *infra*.

[26]Under the parties' 12(b) plan, the vocational technical schools will offer vocational training only for grades eleven and twelve. As a result, vocational training presently offered for grades nine and ten at O'Fallon Technical High School would be eliminated and vocational programs for those grades would be merged into "comprehensive" high schools in the City of St. Louis. "Comprehensive" high schools are regular curriculum high schools not designated or operating specially as "vocational schools."

the United States Department of Education for permission to use previously designated ESAA funds to "fund costs for the development, equipment, renovation and operational costs for the City Board's vocational programs." The June 11, 1980, order also contained the following specific funding provisions:

> D. The Board of Education of the City of St. Louis shall reimburse the State [the one million dollars of state funds discussed above] * * * , spent to the extent that monies are available at the end of the 1981-82 school year from the City Board's Debt Retirement Fund which are not otherwise restricted by prior Court order or necessary for the retirement of the City Board's debt. If the City Board has no such funds, the State shall continue to pay such costs from the [one million dollar account previously discussed] * * * .
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> E. If the above funds are still insufficient to develop, equip, renovate and cover increases in operational costs for these programs which result from compliance with the plan and this decree, then the remainder of the unspent State designated monies existing in the 1980-81 Desegregation Budget shall be utilized as necessary.
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> 11. [sic] During the phase out of ninth and tenth grade students from O'Fallon Technical High School to comprehensive high schools in the City of St. Louis, the State funding allocated for such programs during the school year of phase out shall be paid to the Board of Education of the City of St. Louis for vocational education related matters. Said funding to the City Board shall continue each year thereafter.[27]

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[27]The final sentence of paragraph 11 initially stated: "State defendants have agreed to this provision." On June 24, 1981, the district court deleted this sentence and added the following phrase: " * * * under the desegregation order or modifications thereof." *Liddell v. Board of Education,* No. 72-100C(4), slip op. at 3 (June 24, 1981) (H(207)81).

12. The Court recognizes that the Special School District has previously budgeted two million dollars ($2,000,000.00) [in new equipment] for equipping West County Technical High School which will open in Year Two of the 12b plan for consolidated vocational programs. Much of this equipment will be used at the discretion of the Metropolitan Coordinating Committee for unduplicated programs under the consolidated program plan.[28]

13. All costs concerning the implementation of the vocational programs shall be subject to review by this Court if any party disputes any of these costs as not being reasonable or necessary for the implementation of this order.

14. In the event that the Board of Education of the City of St. Louis is unable to fund the development, equipment, and/or renovation costs and to cover increases in operational costs for these programs which result from compliance with the plan and this decree from the above sources or with current desegregation budgeted revenues, the Board of Education of the City of St. Louis shall apply to the Court for such appropriate orders as may be necessary to secure additional funds essential for such purposes.

The district court also retained jurisdiction of the 12(b) aspects should further vocational-related orders—funding or otherwise—become necessary.

Finally, on June 24, 1981,[29] following a hearing held on June 23, 1981, the district court partially revised its June 11 order in

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[28]The phrase "in new equipment" bracketed in the quotation above was added by the district court on June 24, 1981. *Liddell v. Board of Education,* No. 72-100C(4), slip op. at 4 (June 24, 1981 (H(207)81).

[29]H(207)81.

response to the state defendants' motion to "reconsider * * * [the district court's] funding order dated May 21, 1981." In the fourth order, the court considered the state defendants' objections to the May 21, 1981, order, harmonized the May 21, 1981, funding provisions with those in the June 11, 1981, order and made certain minor modifications to its June 11, 1981, funding provisions.[30]

After careful review of these four 12(b) vocational education funding orders, we hold that the district court did not abuse its discretion in entering the funding provisions of the various orders. This Court has previously held that the state committed an interdistrict constitutional violation by failing to dismantle the racially segregated separate vocational programs in the SSD and city school districts.[31] The state's contention that this previous determination is not an adjudication of interdistrict liability for the vocational aspects of this case is without merit. The district court may, therefore, impose 12(b) funding orders against the state.

In affirming the district court's 12(b) funding orders, we note that the state had ample opportunity to contest the need for and reasonableness of the contemplated vocational costs.[32] In the future, it should participate fully in the budgetary process involving the vocational programs.

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[30]*See* notes 27 & 28, *supra.*

[31]The Missouri State Board of Education simply could have designated the SSD as the AVS for the entire St. Louis metropolitan area by adding the city school district to the SSD's vocational service area.

[32]At oral argument, counsel for the Adams group contended that the average cost of the 12(b) plan per student will be $60,000, compared to pre-plan cost of $2,800 per student. This argument ignores the fact that a portion of the city board's proposed 1981-1982 vocational budget ($1,394,840 out of a total proposed vocational budget of

(3) (a) *Joinder of Suburban Districts and County Units of Government.*

On August 24, 1981, in H(337)81, the district court added eighteen St. Louis County suburban school districts and three St. Louis County governmental officials as parties defendant to this litigation.[33] The district court also stayed various motions to add several other suburban school districts and other entities as parties defendant. Finally, the district court ordered the state defendants and city board to develop and submit a suggested plan of interdistrict school desegregation pursuant to paragraph 12(c).[34]

Several parties appealed from H(337)81 and, in response, others filed motions to dismiss those appeals for lack of appellate jurisdiction. On December 2, 1981, we concluded the validity and scope of paragraph 12(c) and may be reargued but we expressly reserved ruling on the jurisdictional questions concerning the appeals from H(337)81. *Liddell IV,* slip op. at 7-8.

$2,400,147) would be spent for capital outlay. It seems apparent that many of the capital expenditures would pay for the phase out of ninth and tenth grade vocational training at O'Fallon Technical High School and the implementation of vocational training for those two grades at the city's comprehensive high schools. Obviously, many "start up" costs would require a single capital outlay which would not be required in subsequent years. In any event, the district court will consider the Adams group's per-student cost claim when it considers the city board's proposed 1981-1982 vocational budget.

[33]The Pattonville School District was added as a party defendant in H(337)81 but later agreed to participate in the paragraph 12(a) voluntary interdistrict pupil transfer plan. As a result, the district court subsequently stayed motions seeking to join Pattonville as a party defendant in the interdistrict liability proceedings.

[34]Paragraph 12(c) is fully discussed in Part (3) (b).

We now hold that we lack jurisdiction to entertain the appeals from H(337)81. The portions of the district court's order which added additional party defendants are not appealable. *Liddell IV* at 5n.6 (and citation therein). The portions of H(337)81 which stayed certain proceedings pending before the district court—for example, the motions to add additional entities as party defendants—are also not appealable. *Id.* at 13 (and citation therein).

Many newly joined defendants argue that the interdistrict liability issues should be tried as an entirely separate lawsuit, claiming in part that beginning a new record is preferable to utilizing and adding to the large record already accumulated in this litigation. Similarly, the state, in arguing that the interdistrict isues should be tried separately, contends that joinder of so many more defendants to the original lawsuit will not foster judicial economy.

In contrast, the city board, which was recently aligned as a plaintiff in the interdistrict proceedings, asserts that the interdistrict liability issues would best be tried in a single lawsuit. All the plaintiffs in the interdistrict liablity phase, however, claimed at oral argument that they only wanted an opportunity to prove an interdistrict case against the defendants.

We must again stress that many orders entered by the district court are nothing more than matters of case management. The district court must manage this difficult litigation on a day-to-day basis and the parties must not file "premature and piecemeal interlocutory appeals which have no jurisdictional basis." *Liddell IV,* slip op. at 14. Although we lack jurisdiction to consider the challenges to H(337)81, we trust that part (3) (b) of this opinion will alleviate some of the recurring concern of the parties relating to interdistrict matters.

(3) (b) *The 12(c) Proceedings and Interdistrict Relief.*

Considerable controversy has arisen over the proper construction of paragraph 12(c) of Judge Meredith's order of May 21,

1980. This order was approved by this Court as originally entered[35] and as subsequently amended.[36] The amended paragraph 12(c) order reads in pertinent part as follows:

> [T]he State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibility plan of interdistrict school desegregation involving the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignments and administrative reorganization provisions.

Pursuant to this paragraph, four comprehensive plans for integrating the St. Louis schools and various suburban schools have been filed with the district court. Several appellants, especially the St. Louis County schools, governmental units and officials who have been joined as defendants, contend that the district court intends to implement these plans without first affording the suburban schools or governmental units that would be affected an opportunity to be heard and without first making findings of interdistrict liability. They base this view on a series of eight orders issued by the district court, and particularly two

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[35] *Liddell II*, slip op. at 19-20.

[36] *Liddell III*, slip op. at 13-17.

orders issued on September 24, 1981.[37] In those two September 24, 1981, orders, the district court used some language indicating it would "enforce a metropolitan desegregation remedy against the State and St. Louis County school districts as state instrumentalities."[38]

The state defendants contend that because all of the plans for integrating city and county schools would substantially affect the defendant county districts by consolidation of districts, realignment of school boundaries, or pairing of school districts, they cannot be ordered to implement such a remedy until and unless the county schools have been heard and a determination has been made that they have contributed to the segregation of city and county schools. They also argue that further hearings are required to establish whether they can be required to take any actions in addition to those they have already been required to take with respect to the city schools.

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[37]H(336)81; H(337)81; ruling on motion H(341)81; rulings on motions H(409)81 and H(410)81; H(476)81; H(493)81; and H(494)81.

The orders designated as H(493)81 and H(494)81 were issued on September 24, 1981.

[38]We do not reach the state's recurring argument that it cannot merge independent school districts because it lacks real control over those districts. This lack of control, argues the state, supports its view that local school districts are not its "instrumentalities." In support of this argument, the state places primary reliance on *England v. Eckley,* 330 S.W.2d 738 (Mo. 1959) (en banc); *State v. Holmes,* 231 S.W.2d 185 (Mo. 1950) (en banc); and Mo. Const. art. III, § 40.

Regardless of whether the state's arguments have any validity, both Judge Meredith and this Court assured the suburban school districts that they would be given an opportunity to be heard before any imposition of a mandatory interdistrict desegregation remedy. We honor those assurances. Many suburban school districts are now party defendants in this litigation and the interdistrict liability issues will be determined after a full liability hearing. The district court may, if it deems necessary, reach the state's "instrumentality" arguments in the interdistrict liability proceedings. We need not at this time address the merits of the interdistrict proposals before the district court.

The Liddell appellants, on the other hand, assert that the State of Missouri has the ultimate and exclusive responsibility for public education in the state and that, inasmuch as it has been found to be a constitutional wrongdoer in segregating the public schools of the City of St. Louis, it can be required to realign city and county school boundaries and to require consolidation of these schools to further desegregation of both city and county schools without further hearings to determine the liability of the county school districts.

The Adams group, representing white parents and students of South St. Louis, also contend that the district court can order the State of Missouri to realign boundaries between city and county schools and to order consolidation of city and county schools if necessary to effectuate desegregation of the city schools. They, too, assert that it can take these actions without additional hearings or liability findings and cite as support *Morrilton School District v. United States,* 606 F.2d 222 (8th Cir. 1979) (en banc), *cert. denied,* 444 U.S. 1071 (1980; *Evans v. Buchanan,* 582 F.2d 750 (3rd Cir. 1978) (en banc), *cert. denied,* 446 U.S. 923 (1980); *United States v. Board of School Commissioners,* 573 F.2d 400 (7th Cir. 1978).

The City of St. Louis takes the position that the district court orders are not reviewable under 28 U.S.C. §§ 1291 or 1292. It asserts that the appeals before the court in this category are "little more than invitations to this Court to issue a declaratory or advisory opinion concerning the interdistrict aspects, if any, of the case below." They urge us to reject the parties' invitation to use 28 U.S.C. § 1651 as a vehicle to control interlocutory decisions of the district court and subvert the express federal policy against piecemeal litigation.

There is a great deal of merit to the arguments advanced by the City of St. Louis. The district court has yet to issue an order that impacts any of the county schools or units of government. Thus, we are being asked not to rule on a specific plan but to an-

ticipate what the district court may have in mind and to instruct it as to what it can or cannot do. The most that can be said is that the district court has indicated in one or more of its orders that it may take actions which impact significantly on St. Louis County school districts. While the city board is not opposed to such action as a matter of principle, it fears that either this Court or the United States Supreme Court will find that the action taken is inconsistent with the Supreme Court's decision in *Milliken v. Bradley*, 418 U.S. 717 (1974), and that as a result, meaningful interdistrict relief will be delayed for years.

The State of Missouri and the county defendants, on the other hand, are opposed to interdistrict relief as a matter of principle. They assert that they have not been found to have contributed to the segregation of either city or county schools and that unless and until they have been found to have done so after a hearing in which they have had an opportunity to participate, no orders requiring them to take any action with respect to integrating either city or county schools can be taken.

We have no desire to interject ourselves into the management and direction of this case by the district court. That is not our responsibility. We have no wish to take any action which will encourage constant interlocutory appeals, and we do not intend to issue advisory opinions whenever one or more of the parties feels that the district court is about to take a step with which they disagree. We, therefore, hold that we are without jurisdiction to consider the various appeals from the district court's severance order. *See* 9 Moore's Federal Practice ¶ 110.13[8], p. 183 (1980).

In light of the fact that our earlier opinions with respect to paragraph 12(c) may have led to some confusion, we will, however, restate the position of this Court. We do so in order that the process in integrating the St. Louis city schools can continue without interruption and so that the plaintiffs below can obtain a prompt determination of their claim that an interdistrict remedy is appropriate here.

Four major plans now have been submitted. Three of them are broad in scope and would, in essence, establish a single integrated school district consisting of the present city district and a number of suburban districts, the number depending on the particular plan. The new district would be divided into areas for administrative purposes, with students assigned and transported where necessary to achieve a thoroughly integrated school system. The state's plan is essentially one calling for cooperation between school districts.

It is clear from our earlier orders that the broadly based plans cannot be implemented in the context of the present 12(c) proceedings.

It is equally clear, however, that the district court can require existing defendants—the state and the city school board—to take the actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experiences for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict

Paragraph 12(c) permitted the district court to require the defendants who have been adjudged to be constitutional wrongdoers—the state defendants and the city board—to prepare and submit feasibility plans for interdistrict desegregation involving city and suburban schools in a way that will provide complete and lasting school desegregation.

transfer.[39] Such relief would not materially affect parties that have not been found constitutionally liable and, hence, would be permissible under paragraph 12(c).

There is thus no sound reason why the 12(c) hearings should not go forward promptly and why the district court should not determine what actions it can require the state or the city board to take which may involve the suburban schools.

The record also reveals other innovative ideas and techniques that the district court may consider. Their feasibility and cost can be explored in the evidentiary hearings which have already been scheduled and which can be completed promptly. Many of these ideas and techniques require cooperation by the suburban schools, others do not. To the extent that suburban schools are willing to cooperate, the plans requiring their participation can now go forward. To the extent that they are unwilling to do so, the 12(c) plans must be tailored to be effective without their mandated participation. We emphasize that suburban schools that voluntarily participate will not by such participation admit liability or waive any right that they may presently have to be excluded from a plan of mandatory interdistrict desegregation.

In the interests of judicial economy, we suggest that the interdistrict liability proceedings previously severed from the remainder of the case be postponed until after the district court has entered an order in the pending 12(c) proceeding. The interdistrict liability aspect should then proceed promptly thereafter.

(4) *Recusal.*

On September 24, 1981,[40] Judge Hungate denied several motions by county schools and other county defendants to dis-

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[39]These possible remedies are given as examples only. They are not intended to represent an exhaustive list. The district court may adopt other remedies that are appropriate.

[40]H(494)81.

qualify himself from presiding in this case. Specifically, he declined to recuse himself "as to proceedings related to the original lawsuit, including the implementation of remedial plans pursuant to paragraphs 12(a)-(d) * * * ." He did, however, recuse himself "as to the claims of interdistrict constitutional violations" which were presented in various pleadings filed by leave of the district court. In making these rulings, he specifically held that the moving parties' affidavits,[41] which alleged that he had predetermined the interdistrict liability issues, were "clearly insufficient" to warrant recusal under 28 U.S.C. §§ 144 and 455. Nevertheless, he recused himself "from deterimination of the alleged constitutional violations by the county school districts as individual entities" so that "disposition of this complex litigation may proceed in an atmosphere of calm reflection."

Several parties appealed from this partial recusal order and, in response, others filed motions to dismiss those appeals for lack of appellate jurisdiction. On December 2, 1981, we concluded that the various appeals from H(494)81 "arguably" fell within our appellate jurisdiction and allowed them to proceed with a specific reservation of the jurisdictional issues until after briefing and oral argument. *Liddell IV,* slip op. at 9 & 9 n.12. We now hold that we lack jurisdiction to entertain the appeals from the H(494)81 order.

A distict judge's determination "*not* to disqualify himself is reviewable by appeal only from a final judgment in the cause in

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[41]The following parties filed separate motions, along with various pleadings, memoranda and affidavits, to disqualify Judge Hungate: (1) St. Louis County and its individually named officials; (2) Riverview Gardens School District; (3) Mehlville School District; (4) Affton School District; (5) Maplewood-Richmond Heights School District; (6) Jennings School District; (7) Brentwood School District; (8) Bayless School District; (9) Hancock Place School District; (10) Lindbergh School District; (11) Ladue School District; (13) [sic] Rockwood School District; and (14) Webster Groves School District.

which the motion for disqualification was filed." *Scarrella v. Midwest Federal Savings and Loan,* 536 F.2d 1207, 1210 (8th Cir.) (per curiam), *cert. denied,* 429 U.S. 885 (1976) (emphasis added). Such a determination, however, is reviewable by a petition for a writ of mandamus and we may, as we choose to do so here, treat an allegation on appeal as such a petition.

We turn then to the question of whether we should issue a writ of mandamus to require Judge Hungate to disqualify himself. In *Pfizer, Inc. v. Lord,* 456 F.2d 532 (8th Cir.), *cert. denied,* 406 U.S. 976 (1972), we held that mandamus may be utilized to review a district judge's refusal to recuse himself. We also reviewed the standards for recusal. *Id.* at 537. In *United States v. Poludniak,* 657 F.2d 948 (8th Cir. 1981), we again reviewed the standards for recusal, this time in the light of 28 U.S.C. § 455(a) as amended in 1974, which provides: "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

On the basis of a careful review of the record, we find no basis to direct Judge Hungate to recuse himself from the original proceedings. The substance of the movants' claims is that Judge Hungate decided in advance of any evidentiary hearings that the county schools and county defendants would be required to participate in a mandatory interdistrict plan for desegregating the county and city schools. They essentially base this allegation on two statements made by the judge and two orders issued by him.

On April 1, 1981, Judge Hungate stated:

> If I may, in an aside, talk about the different sections we have—12(a)'s, 12(b)'s, 12(c)'s; we have voluntary or mandatory:
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> In World War II, WWII, the big one, you could volunteer. Some of us had that opportunity. You could

> volunteer to go to the Air Force. If you volunteered, they would put you there. You could volunteer for the National Guard. You could volunteer for the Navy. Some of us didn't do that. Later we were drafted, and we were placed in the infantry. You'd be surprised at what great interest the sergeant would have in what you would then like to volunteer for. Now the reception was not too good at that time. I hope that's helpful.

On May 20, 1981, he reportedly stated in substance:

> We all have bosses and the Eighth Circuit is mine. I have to do what they say and if enough people do not participate with [sic, in] the voluntary plan, I will have to enter a mandatory plan.

On August 24, 1981, Judge Hungate issued an order H(337)81 which read in part as follows:

> In light of the overwhelming rejection of the 12(a) voluntary plan, the Court is compelled to begin proceedings on a mandatory inter-district plan pursuant to paragraph 12(c) * * * , On February 13, 1981, the United States Court of Appeals for the Eighth Circuit affirmed this Court's power to order a mandatory inter-district remedy.
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> * * * *
>
> [T]he State defendants * * * and the St. Louis Board of Education are ordered and directed as follows:
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> To develop and submit to the Court by February 1, 1982, a suggested plan on inter-district school desegregation necessary to *eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.* [Emphasis added.]

On August 25, 1981, he issued another order (H(340)81) which directed the court-appointed experts:

> To provide expert assistance to this Court in developing *and implementing* a mandatory, interdistrict desegregation remedy pursuant to paragraph 12(c) of Judge Meredith's order dated May 21, 1980, as amended, and as affirmed by the United States Court of Appeals for the Eighth Circuit. [Emphasis added.]

He further ordered as follows:

> IT IS HEREBY ORDERED that the educational experts appointed by the Court on August 1, 1981, H(285)81, be and they are directed to begin assembling data necessary for devising *a mandatory interdistrict remedy pursuant to paragraph 12(c) for presentation to the parties for implementation in the 1982-83 school year.* IT IS HEREBY FURTHER ORDERED that on or before September 7, 1981, the experts shall file a proposed timetable for outlining the broad parameters of a 12(c) mandatory interdistrict plan. The framework shall be submitted to the Court before the expiration of their 90-day appointment, November 16, 1981. [Emphasis added.]

Certainly the orders cannot serve as a basis for recusal. Judge Hungate was complying with paragraph 12(c) of Judge Meredith's order which has been approved by this Court. The Supreme Court declined to review our decision approving paragraph 12(c). Even if it is assumed that Judge Hungate was reading more into 12(c) than either Judge Meredith or this Court intended, such a reading does not indicate any prejudice on Judge Hungate's part and is not grounds for recusal.

Nor can the oral statements made during the course of the 12(a) proceedings serve as a basis for recusal. At most, they indicate a view on his part that if a successful voluntary plan could not be put together, he would be required to enter a mandatory plan at some date in the future: whether before or after an evidentiary hearing for the affected suburban schools is not

clear. In sum, the orders and statements do not indicate any personal prejudice on his part but, instead, are simply an expression of what he considered his duty to be. *See, e.g., Cleveland v. Krupansky,* 619 F.2d 576, 578-579 (6th Cir.) (per curiam), *cert. denied,* 449 U.S. 834 (1980; *In re International Business Machines Corp.,* 618 F.2d 923, 927-932 (2d Cir. 1980); *Davis v. Board of School Commissioners,* 517 F.2d 1044, 1049-1052 (5th Cir. 1975), *cert. denied,* 425 U.S. 944 (1976); *United States v. Anderson,* 433 F.2d 856, 860 (8th Cir. 1970). For all these reasons, we decline to issue a writ of mandamus to overrule Judge Hungate's refusal to disqualify himself from the original proceedings.

In addition, we hold that we lack jurisdiction to entertain challenges to that portion of H(494)81 in which the district judge recused himself as to the interdistrict liability issues of the case.[42] *See Hampton v. Chicago,* 643 F.2d 478 (7th Cir. 1981) (per curiam) (a district court's order granting a motion to recuse is neither appealable nor subject to mandamus review because a litigant does not have a cognizable interest in having a particular judge sit in his case).

This is a very difficult case and emotions run high. The issues involved here, unfortunately, have been politicized by some public officials and candidates for public office. Every determination entered by the presiding judge has been, and will continue to be, seized upon by someone to advance his own interest. Thus, prudence, caution, and fairness is necessary. We are confident that Judge Hungate has these qualities and that his only aim is to see that the constitutional rights of those af-

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[42]As noted more specifically above, the district judge recused himself from considering the interdistrict liability issues concerning the county suburban school districts. The recusal order presumably is equally applicable to the potential interdistrict liability of the original defendants and the other newly added defendants in this litigation.

fected are vindicated. Chief Judge Wangelin may, if he chooses to do so, reappoint Judge Hungate to preside in the interdistrict liability phase if Judge Hungate would be willing to reassume exclusive control over this complicated case.

CONCLUSION

We once again remand this cause to the district court for further proceedings consistent with this opinion.

The Special School District of St. Louis County and the State of Missouri shall equally bear all costs relating to the appeals which raised issues relating to vocational education. With this exception, each party to these appeals shall bear its own costs.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 80-1458, 1494, 1531, and 1599

Craton Liddell, et al.,

Appellants,

v.

Board of Education of the City of St. Louis, et al.,

Appellees.

Submitted: November 13, 1980

Filed: February 13, 1981

Before HEANEY, BRIGHT and STEPHENSON,
Circuit Judges.

HEANEY, Circuit Judge.

We are asked by the State of Missouri and by three groups of parents to set aside the plan of the United States District Court for the Eastern District of Missouri for integrating the public schools of St. Louis. The State argues that it has been required to pay too much toward the integration plan and that it should not be ordered to participate in developing either a voluntary or an involuntary inter-district integration program. The white parent group complains that the district court plan goes too far and is unfair to white students. The black parent groups assert that the plan doesn't go far enough in that it leaves some schools in North St. Louis all black. All of the appellants assert that the district court erred in failing to find that the United States contributed to the segregation of the St. Louis school district and to require it to pay a substantial portion of the cost of integrating the school system.

We affirm the decision of the district court. The desegregation plan was designed in accordance with the letter and spirit of the mandate of this Court and it meets constitutional requirements. If the plan is fully implemented in the same spirit and with the continuing cooperation of parents, students, teachers and community and religious leaders, a firm foundation will have been laid for affording the children of St. Louis a quality education in a racially netural school system.

We take judicial notice of the fact that Board of Education and one of the parent groups have filed amended complaints in the district court, asking the court to require inter-district integration with the schools of St. Louis, St. Charles and Jefferson Counties. We express no opinion as to the merits of the proposed amendments. We do, however, emphasize that the pendency of these petitions must not be permitted to delay the full and complete implementation of every feature of the plan developed by the district court and approved by this Court, including those sections of the plan that relate to inter-district integration.

I

This case, filed in district court in 1972, is before this Court for the third time.[1] When it was first here, we remanded it with directions to permit the Caldwell parent group to intervene as plaintiffs. *See Liddell v. Caldwell,* 546 F.2d 768 (8th Cir. 1976), *cert. denied,* 433 U.S. 914 (1977). When it was next here, we reversed the district court, concluding that the plaintiffs had clearly proven that the defendants had established and maintained a racially segregated school system in violation of the plaintiffs' constitutional rights. *See Adams v. United States,* 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied,* 101 S.Ct. 88, 66 L.Ed.2d 29 (1980). We remanded the case to the district court with the following admonition:

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[1]For a detailed account of the procedural history of this case, *see Adams v. United States,* 620 F.2d 1277, 1281-1284 (8th Cir.) (en banc), *cert. denied,* 101 S.Ct. 88, 66 L.Ed.2d 29 (1980).

> Segregation in the elementary and secondary schools in St. Louis must now be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.

Id. at 1291-1292.

Only one party—the Adams plaintiffs—asked the Supreme Court to review our decision; the Court denied the petition for certiorari.

On remand, the district court made every effort to comply with our charge. It established an interracial citizen's advisory committee to promote community involvement in the proceedings; it appointed Dr. Gary Allen Orfield to provide expert assistance in the preparation of a desegregation plan; it held extensive evidentiary hearings on proposed plans and the procedures involved in implementing them; and after a careful consideration of all the evidence, it approved a comprehensive desegregation plan to be effective at the start of the 1980-1981 school year. *See Liddell v. Board of Educ.*, 491 F.Supp. 351 (E.D. Mo. 1980).

II

The plan approved by the district court is a modified form of the "Orfield approach" sanctioned by this Court in the previous appeal. *See Adams v. United States, supra,* 620 F.2d at 1293-1296. The essential elements of the plan include (1) reassigning students to achieve the greatest possible number of desegregated schools (defined as 30-50% black); (2) establishing magnet and alternative schools designed to attract students of all races from throughout the St. Louis area; (3) organizing a

middle school system to facilitate clustering, pairing and other integrative efforts; (4) instituting and expanding specialty and part-time integrated programs; (5) facilitating permissive integrative transfers; (6) initiating cooperative inter-district desegregation programs; (7) providing for integration of and special training for school personnel; and (8) developing a comprehensive community relations program.

Although the plan reflects the fact that it is not possible to fully integrate every school in the St. Louis system, the district court faithfully followed the directions of this Court by providing a variety of integrative experiences and enhanced educational opportunities for students remaining in the predominately black schools.

The district court estimated that the overall cost of the desegregation plan would be approximately $22.1 million. The court directed the State of Missouri to pay one-half of the actual cost of desegregation. To finance the remaining 50%, the court ordered the Board of Education to transfer approximately $4.7 million out of its debt retirement account, noting that federal funds would cover the balance. Federal funding to assist in the integration process exceeded $7 million for the 1980-1981 school year.

III

Four parties—the Liddell plaintiffs, the Caldwell plaintiffs, the Adams plaintiffs, and the State of Missouri defendants[2]—appeal from the district court's order approving the desegregation plan. For convenience, the issues on appeal may be divided into two categories: those relating to the design of the plan and those relating to the financing of the plan. We first consider the challenges to the design of the plan.

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[2]The "State defendants" include the State of Missouri and its Board of Education, as well as the following Missouri officials: the Governor, the Attorney General, the Treasurer, the Commissioner of Education, the Commissioner of Administration, and the individual members of the Missouri Board of Education. Because their interests are identical and they have filed a joint brief, we refer to these parties collectively as the State of Missouri.

A. *Design*

1. The Liddell and Caldwell plaintiffs contend that the plan approved by the district court is constitutionally deficient because it does not go far enough to remedy the effects of the defendants' discriminatory practices. Specifically, they argue that the district court erred in holding that schools with 30-50% black enrollments were to be considered integrated. Their position appears to be that the only constitutionally permissible means of integrating the St. Louis system was to reassign students so that each school had the same racial mix as the district as a whole—approximatley 76% black and 24% white.

We cannot agree that the options available to the district court were so limited. In our decision of March 3, 1980, we specifically stated that a plan similar to the one adopted by the district court would meet constitutional requirements. In so doing, we accepted the testimony of Dr. Orfield that such a plan would have the best chance of successfully integrating the St. Louis schools and stabilizing neighborhoods already integrated.

In affirming this aspect of the plan, we emphasize that students remaining in the predominately black schools in St. Louis are not left completely untouched by the new system. Provisions affecting the remaining black schools include magnet and alternative programs, new and expanded specialty programs, permissive intra-district transfers, staff desegregation, staff development, a City/County integrated vocational program, and voluntary pupil exchanges with suburban school districts. We also emphasize that the plan requires the Board of Education to spend a substantial portion of the $22 million desegregation budget to improve the quality of education in those schools that remain all black and continuing expenditures are required for this purpose. Moreover, although a number of all-black or virtually all-black schools remain in St. Louis under the plan, the new system does eliminate the all-white schools from the district. Thus, although the degree of actual integration achieved under the plan is not optimal, we reiterate our

view that under all the circumstances, the plan is a constitutional one and has a better chance of providing a quality integrated education for the school children of St. Louis than any of the other plans that were presented by the parties to his lawsuit.[3]

2. In contrast with the position of the Liddell and Caldwell plaintiffs, the Adams plaintiffs argue that the district court has gone too far in the intra-district pupil reassignment portion of its plan.[4] They note that the Court has included in the reassignment plan a number of schools that were between 30 and 50% black prior to desegregation. These schools, they contend, should not have been required to participate in the plan in view of this Court's determination that the boundary lines and assignment patterns for schools with 30-50% black enrollments should remain substantially changed (sic).

This contention is without merit. Although reassignment does affect some schools that had a pre-plan enrollment of 30-50% black, we are satisfied that their inclusion does not violate our order of March 3, 1980. First, it turned out to be necessary to include some of these schools to accommodate the change from a two-tier (kindergarten-8; 9-12) to a three-tier (kindergarten-5; 6-8; 9-12) system, a change that was designed to help facilitate clustering and other integrative efforts and to improve the

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[3]We note that the plan approved by the district court appears to permit up to a 15% deviation from the 30-50% black guideline used to define integrated schools. In our view, a deviation of this magnitude should be permitted only rarely and then only after the court has determined, following a hearing in which the parties are given an opportunity to present their views, that allowing the variance will not impair the overall effectiveness of the desegregation plan.

[4]The Adams group also claims that the Board of Education relied on false enrollment and other data in developing the plan. Although there may be minor discrepancies in some of the figures, we find no support in the record for the appellants' position that the information relied upon was so inaccurate that the plan must be invalidated.

overall educational opportunities in St. Louis. Second, it appears from the record that many of the schools cited by the appellant as having a pre-plan black population of between 30 and 50% had such a racial mix because students were transported to them, not because the neighborhoods surrounding the schools were integrated. Still other schools were included because their black enrollment percentage has increased rapidly in recent years, indicating that their black population would be likely to exceed 50% in the near future. When read in context, it is clear that our decision of March 3 was intended to minimize the transportation of students and to encourage the development and maintenance of integrated schools in integrated neighborhoods. In our view, the plan approved by the district court is faithful to this concept.

3. The State of Missouri is the sole challenger to paragraph 12 of the district court's order, which provides for various forms of inter-district relief. The State argues that the district court is without authority to order the preparation of any inter-district plan unless and until the suburban districts are joined as parties to the lawsuit. The Adams group, by contrast, argues that the court erred in not developing a more comprehensive inter-district remedy.

Paragraph 12 of the district court's order provides in part:

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> > a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

b) To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

491 F.Supp. at 353.

The appellees contend that this Court should not hear the States's challenge at this time because the directives contained in paragraph 12 are neither final judgments appealable under 28 U.S.C. § 1291 nor orders granting or denying injunctive relief appealable under 28 U.S.C. § 1292. Although the line between appealable and nonappealable orders is rarely clear in a case in which the district court retains jurisdiction over a developing desegregation plan, we are persuaded that we have jurisdiction over these issues in this appeal.[5] Accordingly, we consider the challenge to paragraph 12 on the merits, examining each section of the paragraph separately.

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[5]In support of their position that the provisions of paragraph 12 are nonappealable, the appellees cite to cases in which appeals courts ruled that orders directing school boards to formulate desegregation plans were nonappealable. *See Bradley v. Milliken,* 468 F.2d 902 (6th Cir.), *cert. denied,* 409 U.S. 844 (1972); *Taylor v. Board of Educ.,* 288 F.2d 600 (2nd Cir. 1961). The State of Missouri distinguishes the cases cited by the appellees by noting that the school board in each of these cases was ordered to prepare a remedy consistent with its judicially determined constitutional liability. Here, the State argues, the district court exceeded its jurisdiction by ordering the parties to prepare a plan involving other school districts, even though it is conceded that the

Section (a) of paragraph 12 directs the parties to "make every feasible effort" to work out a voluntary plan of inter-district pupil exchanges to be implemented in the 1980-1981 school year. Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up. Under the terms of the order, the plan is to be designed to "assist in alleviating the school segregation in the City of St. Louis [and to ensure] that inter-district pupil transfers will not impair the desegregation of the St. Louis school district," 491 F.Supp. at 353. Thus, the voluntary exchanges contemplated by section (a) must be viewed as a valid part of the attempt to fashion a workable remedy within the City.

Section (b) of paragraph 12 is also consistent with the district court's responsiblity to order a remedy for existing constitutional violations. The district court specifically found that the State of Missouri's establishment and maintenance of the separate Special District for vocational education was "part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." 491 F.Supp. at 358. Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special District has now been joined as a party defendant in this lawsuit. We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year.

Section (c) of paragraph 12 is also within the authority of the district court. By its terms, that section required the parties to develop and submit to the court by November 15, 1980, a "suggested" inter-district plan "to eradicate the remaining vestiges of government-imposed school segregation in the City of St.

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suburban districts cannot be considered to be constitutional violators unless and until they are joined as parties to the litigation. While the question is not free from doubt, we are satisfied that we have jurisdiction to hear an appeal from a remedial order that, on its fact, arguably involves potential parties who have not yet had their day in court.

Louis and St. Louis County." We must read the term "government-imposed" to mean "found to be government-imposed by a court." Therefore, to the extent that the segregation was imposed by County school districts which are not parties to the lawsuit and which have not been designated as constitutional violators, it cannot be considered to be "government-imposed." But, to the extent any such segregation was imposed by the State or other defendants, and to the extent those defendants have the power to remedy the violation, it is proper for the district court to order them to take steps to do so.

Furthermore, we recognize that the Board of Education and the Caldwell plaintiffs have petitioned the district court to amend their complaints to add as parties defendant the school districts in the three-county area surrounding the City of St. Louis. We express no opinion on the merits of those motions, but we emphasize that the current parties have a responsibility to comply with the terms of the district court order, including the provisions of paragraph 12, regardless of the disposition of the motions pending before the district court.[6]

4. The Adams and the Liddell plaintiffs maintain that the district court erred in approving the personnel assignment portion of the desegregation plan. Both appellants oppose the court's adoption of a "Singleton" plan of personnel assignment, which provides that the black to white staff ratio in each school is to be substantially equal to the district-wide black to white staff ratio. They argue that the Singleton formula is in-

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[6]We note that the district court has found it necessary to extend the deadlines for filing the proposed plans under paragraph 12(a)-(c) and that it is apparently having some difficulty in getting complete and adequate proposals from the parties. We take this opportunity to stress the legal obligation of the State of Missouri, the United States and the Board of Education to develop and implement the plans contemplated by paragraph 12. It is imperative that the district court countenance no excuse for further delay.

consistent with the following directive of this Court: "The consent decree, insofar as it pertains to faculty integration, shall be fully implemented and additional steps taken to ensure that school personnel at every level will be integrated." *Adams v. United States, supra,* 620 F.2d at 1297. In our view, the plan approved by the district court goes beyond what we required, at least with respect to classroom teachers. We will not quarrel with that decision.

The Liddell and Adams groups argue that the personnel integration provision of the plan is inadequate because it fails to integrate the administrative staff. The district court's order provided that a Singleton assignment formula should apply to "[a]ll principals, teachers, and other certified staff who work directly with children at a school." 491 F.2d at 354. The court also stated, "The same criteria shall apply to non-certificated personnel." *Id.* We read these statement to provide that the Singleton assignment scheme is to apply to *all* principals, *all* teachers and *all* non-certificated personnel, as well as to certificated staff members who work directly with children. It appears that nothing is said about administrators other than principals. That is not surprising, inasmuch as the Singleton approach matches district-wide race ratios with staff ratios at each school. There is no way, therefore, to apply that formula directly to administrators who are not assigned to specific schools. We assume that as to such personnel, the prior directive of this Court will be followed, and are confident that if that phase of the plan has not yet been implemented, it will be by the opening of the 1981-1982 school year.

5. The Adams and Liddell plaintiffs also join in challenging the manner in which the burdens of desegregation are distributed among the students. The Adams group contends that the burdens are borne disproportionately by the white students, while the Liddell group asserts that the black students suffer the greatest adverse effects under the plan.

We find no support in the record for either of these positions. The Adams appellants base their argument on the fact that slightly over one-half of the students transported to schools out of their neighborhoods are white even though white students comprise only 24% of the school population. In our view, that is not sufficient to show that the white students bear a disporportionate burden. In a situation such as that in St. Louis, where it is necessary to exchange black students with white students in order to integrate the schools, the number of whites who are transported will almost necessarily be approximately equal to the number of blacks who are similarly transported. Under these circumstances, the percentage of each race transported is not controlling.

The Adams group also argues that the black students reap a disporportionate amount of benefits from the plan. That assertion simply has no support in the record.

The basis of the Liddell group's challenge is essentially that some black children remain in predominately black schools under the plan.[7] We have answered that complaint earlier in this opinion.

6. The Caldwell group raises two issues concerning the composition and operation of the citizens' committees appointed by the district court. In our March 3 opinion, we stated,

> The Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system. In fulfilling

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[7]The Liddell plaintiffs also assert that the district court violated this Court's mandate by failing to establish an educational park in the City of St. Louis. In our March 3 opinion, we did refer to an educational park as one possible method of providing enhanced educational opportunities for St. Louis students. We did not, however, require the district court to establish such a park.

> this responsibility, the Board shall work with the parties of this lawsuit, a broadly based interracial committee to be named by the district court and an expert, or experts, to be named by the district court.

Adams v. United States, supra, 620 F.2d at 1295 (footnote omitted).

In accordance with this directive, the district court appointed a twenty-member bi-racial "Citizens' Committee" to assist the Board of Education in developing the desegregation plan. The members of the Citizens' Committee were chosen from lists provided by the parties; four of the twenty members were selected from the list submitted by the Caldwell plaintiffs. Following approval of the plan, the court disbanded the Citizens' Committee and adopted a new "Desegregation Monitoring and Advisory Committee." The new group was composed of twelve members, one-half of whom were members of the original Citizens' Committee.

The Caldwell plaintiffs assert that they are not adequately represented on this new committee. The record shows, however, that two of the twelve Monitoring Committee members, including the vice chairperson, were originally nominated for the Citizens' Committee by the Caldwell group. It also shows that six of the twelve members on the Monitoring Committee are black. In light of these facts, no abuse of discretion has been demonstrated.

The Caldwell appellants' second objection to the Monitoring Committee is that the district court erred in expressly authorizing *ex parte,* oral communication between the court and the Monitoring Committee chairperson and vice chairperson. We agree that all parties are entitled to know of the advice given the court by the Committee. *See Bradley v. Milliken,* 620 F.2d 1143, 1156-1158 (6th Cir.), *cert. denied,* 101 S.Ct. 207, 66 L.Ed.2d 80 (1980). The best practice would be to reduce to writing all com-

munications between the court and the Committee, make them part of the record, and provide them to counsel for the parties. If oral contact is deemed necessary by the district court, the parties should, where possible, be given notice and opportunity to be present when the oral report is received. To this point, however, no prejudice has been shown from any alleged *ex parte* contacts.

B. *Financing*

1. All four of the appellants join in mounting the primary challenge to the financing of the desegregation plan, arguing that the district court erred in failing to directly order relief against the United States government.[8]

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[8]The claims of the Caldwell appellants go beyond the financial liability of the United States. They maintain that the government should be required to take affirmative steps to reverse the discriminatory effects of federal housing and other policies. This issue has not been tried in this lawsuit. Accordingly, the district court did not err in refusing to grant affirmative relief against the United States.

We note in passing that the district court has taken steps to ensure that federally assisted housing programs are operated so as to aid in the implementation of school desegregation in St. Louis. In paragraph 12(d) of its order, the district court directed the State defendants, the United States and the St. Louis Board of Education

> [t]o develop and submit to the Court by November 1, 1980, in conjunction with the Community Development Agency of the City of St. Louis, a suggested plan for insuring that the operation of federally-assisted housing programs in the St. Louis metropolitan area will facilitate the school desegregation ordered herein.

491 F.Supp. at 354.

No party has challenged this aspect of the district court's order. The parties have submitted plans in accordance with the order, and we approve of this effort to facilitate implementation of the overall desegregation plan.

In support of their position, the appellants point to evidence in the record, as well as to statements of the district court and this Court, indicating that the policies and practices of the federal government have been a significant cause of segregation in the St. Louis school system. The fact remains, however, that no party has named the United States as a defendant and alleged that it engaged in discriminatory practices.[9] The real question, therefore, is whether the district court abused its discretion in refusing to grant the Caldwell plaintiffs' motion to amend its complaint to seek relief against the United States.

Under all the circumstances of this case, we find no abuse of discretion. The Caldwell plaintiffs' motion to amend was filed on May 23, 1980, one week after the district court concluded evidentiary hearings on the proposed desegregation plans. At that time, the district court was operating under a stringent time schedule, mandated by this Court, requiring that the plan be implemented by the beginning of the 1980-1981 school year. Given this need to expedite approval and implementation of the plan and the likely delay attendant in adding new theories of liability against a new defendant, we hold that the district court did not abuse its discretion in refusing to grant the Caldwell group's motion to amend at that time.

In affirming the district court's refusal to grant relief against the United States, we are mindful of the significant financial role played by the federal government in implementing the St. Louis desegregation plan. In its order approving the plan, the district court expressly recognized that a substantial portion of the funding for integration would come from the United States government. The court directed the United States Department

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[9]The Adams plaintiffs did name the United States as a defendant in its complaint in intervention. Rather that complain of the government's segregative acts, however, the Adams group alleged that the United States illegally required the St. Louis school district to take steps to desegregate the schools as a condition to release of federal funds for the district.

of Education to expedite the processing of funding applications for St. Louis under the Emergency School Aid Act (ESAA), 20 U.S.C. § 3191 *et seq.* Apparently, this direction was heeded since the St. Louis school system received over $7 million in ESAA funds—nearly one-third of the desegregation budget—to cover the costs of implementing the plan during the 1980-1981 school year. Moreover, the evidence in the record gives us no reason to believe that similar funding will not be available to continue implementation of the plan for the foreseeable future. Under these circumstances, we are unwilling to hold that the district court erred by failing to expressly order the United States to pay for part of the desegregation plan.

2. The State of Missouri vigorously contends that it should have no part in paying for the costs of integration because its actions did not violate the Constitution. More precisely, the State argues that this Court did not overrule the district court's earlier finding of non-liability on the part of the State. Thus, the State asserts, the district court was precluded on remand from finding the State to be a constitutional violator.

This contention is wholly without merit. In our March 3 opinion, we specifically recognized the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system. Furthermore, we expressly directed the district court to apportion the costs of the desegregation plan among the defendants. *Adams v. United States, supra,* 620 F.2d at 1295 n.28. These statements amount to a clear reversal of the district court's findings concerning the liability of the State, and the State has chosen not to seek review of that decision in the Supreme Court. At the very least, our opinion left the district court free to review its earlier conclusions. We will not disturb its decision to do so.

3. As an alternative argument, the State contends that, even if it was proper to require it to fund part of the plan, it has been ordered to pay too great a share. The State maintains that the

amount it has been ordered to pay is not commensurate with the degree of its constitutional violation. In addition, it argues that the desegregation plan budget is inflated and that the State's portion of the funding is too great as a result. We agree with neither contention.

After reviewing the discriminatory action and inaction of the State of Missouri, the district court concluded that "the State defendants stand before this Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty." 491 F.Supp. at 359. This conclusion has ample support in the record; as noted, we recognized as much in the prior appeal. It was well within the discretion of the district court, therefore, to order the State to pay one-half of the costs of integrating the St. Louis school system.

The State's complaints about the desegregation plan budget are that it includes items that are not properly considered part of the integration process and that certain savings were not taken into account. We need not review the specific items in the plan budget, however, because it is clear that the approved budget is only an estimate of the expected costs of implementing the plan. The district court's order requires the State to pay one-half of the *actual* costs of implementing the desegregation plan; the budget is used only to set a ceiling on the amount of the State's participation. In addition, the district court specifically directed that "continued efforts be made to reduce the actual costs of implementation." 491 F.Supp. at 352.[10]

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[10]Like the State of Missouri, the Adams appellants contest the validity of the budget on the ground that it includes items not necessary for integration. Inexplicably, the Adams group also takes the seemingly inconsistent position that the amount allocated by the budget is insufficient to desegregate the St. Louis schools. For the reasons stated in the text, we need not decide the validity of these challenges to the budget.

4. The Adams' plaintiffs contend that the district court erred in directing the Board of Education to transfer approximately $4.6 million in excess funds from its debt retirement account to be used to make the building modifications necessitated by the desegregation plan. This complaint is based on the assertion that the Board of Education was without authority under Missouri law to collect surplus funds in the account reserved for the retirement of bonds. The Board of Education responds that the money in the debt retirement account was collected in accordance with statutory guidelines following annual public hearings, and that no one has complained of the accumulated surplus prior to this time.

We decline to rule on whether Missouri law authorized the Board of Education to accumulate funds in its debt retirement account. This is surely not the most suitable forum for determining the propriety of the Board of Education's bond issues. We are satisfied that the district court had discretion to order the transfer of funds already collected and held by the Board.

To summarize, we affirm the judgment of the district court and commend it for the manner and promptness with which it implemented the earlier decision of this Court. We remand the matter to the district court with directions to continue with the implementation of its plan in accordance with the slight modifications made by this opinion. All parties will bear their own costs in this appeal.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Nos. 79-1468, 1470, 1471, 1477, and 1486

Janice Adams, et al.,

Appellants,

v.

United States of America, et al.,

Appellees.

Submitted: January 16, 1980

Filed: March 3, 1980

Opinion of the Court by CHIEF JUDGE LAY, JUDGE HEANEY, JUDGE BRIGHT, JUDGE ROSS, JUDGE STEPHENSON, JUDGE HENLEY and JUDGE McMILLAN.

Prior to 1865, Missouri prohibited the creation or maintenance of schools for teaching black children to read or write. In 1865, the state legislature passed laws requiring that separate schools be established for black students. The substance of this legislation was incorporated in the Missouri Constitution of 1945. Separate schools were maintained by the St. Louis Board of Education pursuant to the legislation and the state constitution.

Ninety years after Missouri first required separate schools, the United States Supreme Court, in the *Brown v. Board of Education* decisions, found that segregated school systems were providing an inferior education to black children. It held that such systems must be disestablished with all deliberate speed. As a result of these decisions, the Missouri laws requiring separate schools were repealed or declared inoperative. The St. Louis Board of Education's response to *Brown* was to adopt a

"neighborhood school plan." Now, twenty-six years later, St. Louis elementary and secondary schools remain segregated.

The St. Louis Board of Education failed to take effective measures to desegregate the school system in the years immediately following *Brown I* and has subsequently enforced policies with respect to the assignment of students, the transportation of students, the assignment of personnel and the construction of school facilities which cannot be reasonably explained without reference to racial concerns and which have contributed substantially to continuing segregation in the school system. This failure resulted in the commencement of this action in 1972.

Since 1972, the Board of Education has taken some steps to disestablish the dual system. These include the adoption of an incremental faculty desegregation plan and the opening of several specialized and magnet schools, some of which are integrated.

In our judgment, these steps, while meaningful, are not adequate to disestablish the existing segregated school system. Something more is clearly required. We thus have no alternative but to again remand this matter to the district court with directions to require the Board of Education, in consultation with the parties, a qualified expert and an interracial committee selected by the district court from all elements of the community, to develop and implement a plan that will integrate the St. Louis public schools.

I. *HISTORICAL BACKGROUND*

Prior to the Civil War, a Missouri statute provided: "No person shall keep or teach any school for the instruction of negroes or mulattoes, in reading or writing, in this State." Act of February 16, 1847, §1, 1847 Mo. Laws 103. Beginning in 1865, the Missouri General Assembly enacted a series of statutes requiring separate public schools for blacks. *See, e.g.*, Act of

February 17, 1865, §13, 1865 Mo. Laws 170; Act of June 11, 1889, §7051a, 1889 Mo. Laws 226. This segregated system was incorporated into the Missouri Constitution of 1945, which specifically provided that separate schools were to be maintained for "white and colored children." *See* Mo. Const. art. IX, §1(a) (1945). Although a 1954 Attorney General opinion declared this provision unenforceable following *Brown I*, it remained a part of the state constitution until repealed in 1976. Statutes implementing the constitutionally mandated segregation provided for separate funding, separate enumerations, separate consolidated "colored school districts, and the interdistrict transfer of black students. Most of these statutes were not repealed until 1957. *See* Act of July 6, 1957, §1, 1957 Mo. Laws 452.

In the 1953-1954 school year, the St. Louis school district operated seven white and two black high schools, approximately eighty-three white and forty black elementary schools, and one white and one black vocational/technical school. There were 58,595 white (65.5%) and 30,880 black (34.5%) elementary and high school students attending school in the district.

Under the state-mandated segregated system, white students were generally assigned to schools in their neighborhoods. Black students attended black schools in the "core" of the city. Those black students residing outside the "core" were bussed into the black schools; for them there were no neighborhood schools.[1] Separate overlapping attendance zones were maintained for black and white students. Black students from some suburban St. Louis County school districts were also bussed into the City's black schools because state law and practice prohibited them from attending their local schools. The black schools were staffed by black teachers, administrators and nonprofessionals; the white schools by white personnel.

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[1]*See* Appendix I.

After *Brown,* the St. Louis Board of Education declared that it would implement a plan designed to desegregate its system. The heart of that plan was said to be the "neighborhood school concept."[2] School attendance zones were redrawn and students were generally assigned to schools close to their homes. The zones were nearly identical with the boundaries of racially identifiable neighborhoods.[3] Moreover, a "continuation transfer" option was made available to all students then enrolled, permitting them to remain in the school in which they were then enrolled until graduation, unless overcrowding would result.

The new plan did not change the segregated nature of the St. Louis school system. As detailed in Part IV of this opinion, schools that had all-black student and faculty populations prior to *Brown* continued to be all black or virtually all black after the 1955 plan went into effect. Most pre-*Brown* white schools also retained their racial identity. Those pre-*Brown* white schools located in the black neighborhoods, however, turned virtually all black immediately after the plan was implemented.

II. *PROCEDURAL HISTORY*

On February 18, 1972, Craton Liddell, his mother, and other members of the Concerned Parents of North St. Louis and their children filed this action in the United States District Court for the Eastern District of Missouri seeking to represent the class of black school children in the St. Louis school system. They alleged that the Board of Education and its administrators had "effected and perpetuated racial segregation and discrimination" in the operation of the public schools of the City of St. Louis, in violation of the Fourteenth Amendment.

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[2]At trial, St. Louis School Superintendent Robert E. Wentz, defined a neighborhood school as a "school that serves a specific geographic area defined usually in fairly close proximity to that school, the immediate area around that school."

[3]*See* Appendix II.

For more than a year, the parties engaged in discovery proceedings. On October 3, 1973, a class was certified and, by public notice, other interested parties were invited to intervene on or before December 1, 1973. No one accepted the invitation. The defendant Board of Education's motion to join as additional parties defendant the Governor, the State Attorney General, the Commissioner of Education of the State of Missouri, the State Board of Education, the St. Louis County Superintendent of Education, and the twenty school districts in St. Louis County that constitute the first two tiers of districts adjoining the City of St. Louis was also denied without comment by the district court on December 1, 1973.

Early in 1974, the district court requested that the parties stipulate as to the undisputed facts. The stipulations were filed on June 7, 1974. Following a year and a half of negotiations, the Liddell group and the Board of Education agreed to a consent decree which was approved by the court on December 24, 1975.[4] The court ordered publication of the judgment and advised that any objections thereto, either by members of the class or by other interested parties, should be filed by January 16, 1976. On that date, objections to the decree were filed by organizations representing St. Louis teachers and by a second group of black parents (Caldwell, et al.), who were joined by the St. Louis Chapter of the NAACP. The Caldwell group moved to intervene.

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[4]The consent decree is set out in full as Appendix B to the district court's opinion, *Liddell v. Bd. of Ed., City of St. Louis, Etc.*, 469 F.Supp. 1304, 1387 (E.D. Mo. 1979). The decree explicitly stated that nothing therein was to be deemed an admission by the Board of Education that the plaintiffs' allegations were true. It did include, however, an admission that "segregation is present, as a matter of fact, in the Public School System of the City of St. Louis * * * ." *Id.* at 1389. To remedy that segregation, the decree required the Board of Education "to take affirmative action to secure unto plaintiffs their right to attend racially nonsegregated and nondiscriminatory schools * * * and * * * to take the affirmative action hereinafter set forth." *Id.* at 1389. The decree then required the Board to (1) progressively

At a hearing, Liddell and the Board of Education defended the consent decree and opposed the motion for intervention. The district court overruled the objections and denied the Caldwell group's motion to intervene on the grounds that the motion was untimely and that the class was adequately represented. The Caldwell group appealed the district court's denial of its motion to intervene. This Court reversed on December 13, 1976. *Liddell v. Caldwell,* 546 F.2d 768 (8th Cir. 1976). On appeal, we first considered the argument that the Caldwell motion was untimely. The Caldwell group's position was that intervention was appropriate because the group was primarily interested in the remedial issue, an issue that had not yet been fully or adequately resolved. Noting that, "as all agree, [the consent decree did] not constitute the overall plan for desegregation," but represented "only partial steps toward implementing a unitary system, " *id.* at 771, this Court held that intervention for the purpose of litigating the remedial issue was timely.

We turned next to the issue of the adequacy of the class representation. The Caldwell group argued that the plaintiffs had abandoned the original goal of the litigation when they entered into consent decree. In particular, Caldwell attacked the decree for its failure to require desegregaton of the elementary schools and for offering only marginal opportunity for desegregation in grades seven through twelve. Caldwell complained, in essence, that the consent decree ignored the need for meaningful

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desegregate its faculty so that, in 1976-1977, 10%, in 1977-1978, 20%, and in 1978-1979, no less than 30% of the teachers and staff in each school would be of the minority race in that school; (2) consider the objective of eradicating segregation when making decisions regarding the construction or closing of schools; (3) make a study, to be submitted to the court in January of 1977, on the realignment of elementary feeder schools to high schools to reduce segregation at the high schools, and (4) make a report to the court on whether magnet elementary schools and special subject high schools would be of assistance in eliminating segregation and on the feasibility of system-wide curriculum improvement. Jurisdiction over the case was retained by the district court.

integration. We observed that "if the overall plan to be submitted by the board [in compliance with the consent decree] contains major deficiencies in the respects asserted, the plan will encounter serious constitutional objection." *Id.* at 733.

Since serious questions had been raised concerning the adequacy of the consent decree and because remedial planning was to be an ongoing process, we directed the district court to immediately grant the Caldwell group's petition for intervention. Further, in light of the difficulties of achieving a successful remedy, we suggested that the district court invite the United States Department of Justice and the Missouri State Board of Education to intervene, that a biracial citizens committee be created to aid in the planning of a remedy, and that a voluntary inter-district solution be investigated. We further directed the district court to hear objections to the Board's forthcoming desegregation plan and to consider any alternative plans submitted by other parties. Finally, we directed that "[i]n no event should implementation of plans for a unitary school system be delayed beyond the commencement of the 1977-78 school term." *Id.* at 774. The Board of Education promptly filed a petition for certiorari with the United States Supreme Court.

On February 25, 1977, the district court granted the Caldwell group leave to intervene.

On February 28 and March 10, 1977, the Board of Education submitted a plan for reducing racial segregation in the City's secondary schools. Thereafter, the parties filed their objections to the plan and, in April of 1977, the district court held a hearing. Finding that the only portion of the Board of Education's plan on which there was agreement was that relating to magnet schools, the court ordered the Board to proceed with the implementation of that part of the plan for the school year beginning in September of 1977. The court withheld action on any other aspect of the plan and scheduled further hearings on the plan and its alternatives for July 25, 1977.

Later that spring and summer, Liddell, the Caldwell group and the United States Department of Justice (as amicus curiae) submitted alternative plans for the desegregation of the school system. In May, the Caldwell group moved to enforce its plan by injunction.

On June 27, 1977, the Supreme Court denied the Board's petition for certiorari. *St. Louis Board of Education v. Caldwell, et al.*, 433 U.S. 914 (1977). On July 13, 1977, the district court decided, on its own motion, that it was now necessary to determine whether there had been any constitutional violation that would support the imposition of a remedy. The court stated: "This determination has never been made by the consent decree nor the stipulation of facts, and the stipulation of facts denies any constitutional violation by defendants. * * * The remedy to be adopted by the Court will depend on the nature and extent of the constitutional violation, if any." *Craton Liddell, et al., and Earline Caldwell, a Minor, et al. v. The Board of Education of the City of St. Louis, Missouri, et al.*, No. 72 C 100(1), slip op. at 2 (E.D. Mo. July 13, 1977).

By various orders during the summer of 1977, the United States, the City of St. Louis, Janice Adams, et al. (representing the Concerned Parents for Neighborhood Schools) and Mary Puleo, et al. (representing the Involved Citizens Committee) were allowed to intervene as plaintiffs. The State of Missouri, the Commissioner of Education of the State of Missouri and the State of Missouri Board of Education were added as parties defendant.

With the understanding that both liability and remedy were at issue, the case proceeded to trial.[5] The eight parties aligned themselves into two principal groups. One group, Liddell, the Caldwell group and the Department of Justice, took the position that the Board of Education had violated the United States Constitution by its operation of the public schools. Each then argued the merits of its own remedial alternative. The second group, the Board of Education, the State of Missouri, the City

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[5]We note that the lengthy trial produced over 7,000 pages of transcript and about 1,200 exhibits which both expanded and supplemented the facts set forth in the stipulation filed more than three years before trial. The district court considered the entire record as do we.

of St. Louis and Adams, denied that any constitutional violation had occurred.[6] The Board of Education argued that it had never acted with an intent to segregate and that it was not responsible for any racial segregation found to exist. It agreed, nonetheless, to implement its desegregation plan developed pursuant to the consent decree. The State argued that there had been no violation but that, in any event, it was not responsible and should not be made to participate in any remedy. Puleo did not participate in the trial.

On April 12, 1979, the district court handed down its decision. *Liddell v. Bd. of Ed., City of St. Louis, Etc.,* 469 F.Supp. 1304 (E.D. Mo. 1979). If found no constitutional violation by the defendants. It concluded that the St. Louis Board of Education had fulfilled its obligation to create a unitary school system in 1955 and 1956 by the adoption of "a neighborhood school policy." It held that the resegregation of the system had resulted from demographic shifts influenced by the policies of the federal government and others, not by the acts or omissions of the Board of Education. Nevertheless, the district court held that the Board of Education was bound by the consent decree. As a guide to continued planning under that decree, the court instructed that

> [s]ince no constitutional violation has been found, the criteria shall be quality education, which includes integration of the races, where practical and feasible.
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> *Id.* at 1365.

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[6]Adams and the City also argued that the court had no authority to enforce the consent decree because no violation had occurred. They have again made that argument in their appeal to this Court. The district court considered this position "untenable." *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1365. In light of our disposition of this case, we have no occasion to consider the argument.

III. *ISSUES ON APPEAL*

The principal issues on appeal are: (1) whether the Board effectively desegregated the school system in 1954-1956 by adopting and implementing its neighborhood school plan; (2) whether the Board policies or actions since that date have contributed to the present segregated condition of the school system; (3) what policies and actions must now be taken to integrate the St. Louis elementary and secondary schools; and (4) whether certain appellants should be awarded attorney fees.[7]

IV. *EFFECTIVENESS OF THE 1954-1956 BOARD PLAN*

The record in the present case clearly establishes that the St. Louis Board of Education's 1954-1956 "neighborhood school plan"[8] had very little, if any, effect on the existing dual school

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[7]An additional issue on appeal is whether the district court erred in holding moot Adam's contention that the Board's policy regarding admission to the magnet schools discriminated against white non-public students. The district court held the question to be moot because the policy was abandoned in the 1978-1979 school year. *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1354. We agree.

[8]The Board of Education notes that, besides the neighborhood school policy, its 1954-1956 plan included educational programs for parents and faculty, and inter-school visitations and lectures for the students designed to lessen racial tension. We have no reason to doubt that the Board took whatever steps it could to lessen conflict within the school system and community but these steps did not fulfill the defendants' constitutional duty to disestablish the dual system. Indeed, it appears from the record that, in the interest of avoiding conflict, the Board took steps to ensure that no significant desegregation occurred.

The Board also emphasizes that schools with city-wide enrollment, such as Harris Teachers College and special elementary schools for handicapped students, were desegregated pursuant to the 1954-1956 plan. This fact, however, does not in any way excuse the Board's failure to desegregate the regular elementary and secondary schools in the City.

system in the Ctiy. The new plan resulted in most of the student population continuing to attend one-race or virtually one-race schools. Although there are few exact figures for the period immediately following implementation of the plan because the Board of Education kept no records of school racial composition from 1955 to 1962, all the available data demonstrates that little desegregation actually occurred in 1954-1956.

A 1956 Board of Education report cited 1955 projections indicating that over one-half of the white elementary schools (46 or 83) would have an all-white student population and two-thirds of the black elementary schools (27 of 40) would remain all black immediately following the plan's implementation. The remaining thirteen formerly all-black elementary schools were also projected to remain segregated, with student populations ranging from 82% to 99% black at a time when blacks comprised approximately 35% of the public school population. *Cf. Columbus Board of Education v. Penick,* ____ U.S. ____, 61 L.Ed.2d 666, 673 (1979).

The situation was similar in the high schools. A 1962 staff report to the United States Civil Rights Commission stated that the two formerly black high schools, Sumner and Vashon, enrolling more than 3,400 students, remained all black after the plan was implemented. The 1955-1956 populations of the seven formerly white high schools were reported to be as follows:

SCHOOL	NO. WHITE	NO. BLACK	% BLACK
Southwest	1,583[9]	0	0 %
Cleveland	1,476	7	0.4%
Roosevelt	1,791	29	1.5%
Beaumont	1,792	98	5 %
McKinley	1,437	211	13 %
Central	1,034	167	14 %
Soldan	1,000	350	26 %
	10,083	862	7.9%

In 1962, the Board of Education again began to keep complete records on the racial composition of schools in the district. Those records corroborate earlier evidence of the segregative effects of the School Board's plan. In that year, all twenty-eight of the formerly black elementary schools still in existence were all or virtually all black; thirty-six other elementary schools were over 90% black. Eighty-one percent of the black students attended schools that were 90% or more black. Similarly, fifty of the formerly white schools remained 85% or more white in 1962 and two-thirds of the white students attended schools that were 90% or more white. The 1962 figures also show that the overall school population and the black percentage had increased since 1954. The 1962-1963 total enrollment was 108,245—55.4% black and 44.6% white.

These segregated patterns in student assignments were mirrored in the faculty assignments. Of the twenty-eight pre-*Brown* black schools still in existence in 1962, twenty-six had faculties that were 100% black. The other two were Sumner High School (98.7% black) and Henry elementary (82.8% black). Moreover, those formerly white schools that had changed student racial identity between 1954 and 1962 tended to change faculty racial identity as well.

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[9]The number of white students at Southwest is estimated based on the 1953-1954 student enrollment figures.

By the start of the 1979-1980 school year, the district enrollment had decreased to 66,011, while the district-wide percentage of black students had increased to 75.5%. Eighty-two percent of the black students still attend schools that are 90% or more black. Of the 119 regular elementary and secondary schools currently operating in the district, seventy-eight (65.5%) are currently 90% or more black; fourteen (11.7%) are 90% or more white. Thus, 77.3% of the regular schools in the City are now essentially one-race schools.[10]

The defendants do not dispute the segregated nature of the St. Louis school system. Instead, they argue that current segregation "is not the result of present or past discriminatory action on their part." *See Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 26 (1971). Specifically, defendants assert that they disestablished the dual school system, as required by *Brown,* when they instituted the "neighborhood school policy"[11] in 1954-1956. The district court agreed with this contention. A careful review of the record and the controlling law, however, convinces us that the district court was clearly in error as to the constitutional requirements imposed on defendants who have formerly discriminated pursuant to state law. It also erred in its evaluation of the extent to which the defendants have met those requirements.

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[10]*See* Appendix III detailing enrollment statistics for 1975-1976. Statistics for 1979-1980 have been filed with this Court by the defendant School Board.

[11]Under the 1954-1956 Board plan, students were assigned to schools close to their homes. In that sense, the plan was a "neighborhood" plan. The boundary lines for the high schools, however, were drawn so as to assign the students living in the predominately black neighborhoods to the two pre-*Brown* black high schools. *See* Appendix II. Following implementation of the School Board plan, both of these schools opened with 100% black enrollments. The elementary school boundaries were also drawn so that the schools remained highly segregated.

The district court erroneously held that the establishment of a neighborhood attendance policy fulfilled the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *See Green v. School Board of New Kent County,* 391 U.S. 430, 437-438 (1968). Neighborhood school policies have been the subject of Supreme Court attention on numerous occasions. The Court has consistently held that merely establishing a facially neutral school assignment system is not sufficient to eliminate the constitutional violation caused by past intentional discrimination. In *Swann,* the Court stated,

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. * * *
>
> * * * "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artifical racial separation. * * * In short, an assignment plan is not acceptable simply because it appears to be neutral.

An examination of the maps and population statistics in this record makes it clear that the Board could have, without sacrificing the neighborhood concept, drawn the boundaries so as to include significant numbers of white students in the formerly all-black schools. A reading of the record also makes clear, however, that strong community oppostion has prevented the Board from integrating the white children of South St. Louis with the black children of North St. Louis.

Swann v. Charlotte-Mecklenburg Bd. of Ed., supra at 28; *see Keyes v. School District No. 1,* 413 U.S. 189 (1973);[12] *Clark v. Board of Education of Little Rock School Dist.*, 426 F.2d 1035 (8th Cir. 1970) (en banc), *cert. denied,* 402 U.S. 952 (1971). In *Davis v. Board of School Commrs.*, 402 U.S. 33, 37 (1971), the Court expressly stated that neighborhood school zoning is not "per se adequate to meet the remedial responsibilities of local boards." *See also Arnulfo M. Diaz, et al. v. San Jose Unified School District, et al.,* No. 76-2148, slip op. at 582 (9th Cir., Nov. 5, 1979) ("The existence of such a [neighborhood] policy is not enough to prove the absence of segregative intent."). Indeed, the Court has gone so far as to question whether a racially neutral policy would ever be adequate to meet a school board's affirmative duty to disestablish a dual school system: "In this remedial process, steps will almost invariably require that students be assigned 'differently because of their race.' * * * Any other approach would freeze the status quo that is the very

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[12]In *Keyes,* the Supreme Court stated:

> Our Brother Rehnquist argues in dissent that Brown v Board of Education did not impose an "affirmative duty to integrate" the schools of a dual school system but was only a "prohibition against discrimination" "in the sense that the assignment of a child to a particular school is not made to depend on his race . . ." Infra, at 258. That is the interpretation of Brown expressed 18 years ago by a three-judge court in Briggs v Elliott, 132 F Supp 776, 777 (1955): "The Constitution, in other words, does not require integration. It merely forbids discrimination." But Green v County School Board, 391 US 430, 437-438 (1968), rejected that interpretation insofar as Green expressly held that "School boards . . . operating state-compelled dual systems were nevertheless clearly charged [by Brown II] with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Green remains the governing principle.

Keyes v. School District No. 1, 413 U.S. 189, 200 n.11 (1973).

target of all desegregation processes." *McDaniel v. Barresi,* 402 U.S. 39, 41 (1971).[13]

The record shows that the Board's 1954-1956 plan perpetuated the segregated school system. One School Board document discloses that the results of the 1954-1956 plan were specifically intended. A 1956 report, prepared by the Office of the Superintendent of Instruction, stated that when the 1954-1956 plan was implemented, the school attendance zones were drawn so as to "re-locate the smallest possible number of pupils." Similarly, the post-*Brown* policy adopted by the School Board was designed to have the least possible impact on the segregated personnel assignments. The policy provided: "Whenever possible, both teaching and non-teaching employees will retain their present assignments." Preservation of the status quo, obviously, meant preservation of a segregated system.

Aside from direct statements of intent, there is an abundance of evidence from which segregative intent can be inferred. According to one of the most recent Supreme Court pronouncements on the question, one factor tending to indicate the existence of segregative intent is a school board's "[a]dherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence upon racial imbalance in a

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[13]The School Board relies on several Sixth Circuit cases upholding neighborhood assignment policies that resulted in foreseeable racially imbalanced schools. *See Higgins v. Board of Education of City of Grand Rapids,* 508 F.2d 779 (6th Cir. 1974); *Deal v. Cincinnati Board of Education,* 419 F.2d 1387 (6th Cir. 1969); *Deal v. Cincinnati Board of Education,* 369 F.2d 55 (6th Cir. 1969). These cases are easily distinguished from the present case. First, neither *Higgins* nor *Deal* involved a completely new neighborhood system with redrawn attendance zone boundaries; both Cincinnati and Grand Rapids had used a neighborhood school system for many years. More importantly, neither *Higgins* nor *Deal* involved a situation in which segregation had been imposed by law until the time of *Brown.*

school system." *Columbus Board of Education v. Penick, supra* at 681. The immediate effects of the St. Louis School Board's 1954-1956 plan were plainly foreseeable by the Board and school administrators. As is graphically portrayed in Appendix II, the 1955-1956 high school attendance zones were drawn so as to correspond, with remarkable consistency, to the racially identifiable residential neighborhoods in the city. Elementary school boundary lines were drawn in a similar fashion. The result was inevitable and unquestionably foreseeable: As detailed earlier, the black schools remained predominately black and the white schools remained predominately white, with very few exceptions.[14]

Further evidence of the Board's intent to maintain a segregated school system is the "continuation transfer" policy that was a part of the 1954-1956 plan.[15] The policy provided:

> Students already enrolled in a school, but not resident in its new district may, but are not required, to continue at that school until they graduate. This privilege will be granted, however, only if the particular school is not overcrowded.

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[14]Despite this persuasive evidence, the district court concluded that the 1954-1956 plan "did not have the foreseeable consequence of bringing about or maintaining segregation," primarily because "[t]he massive changes in the racial makeup of the City in the late 1950's and 1960's were not foreseeable by the Board." This conclusion is clearly erroneous. The Board knew that when its plan was implemented, the white schools in South St. Louis would remain white and the black schools in the "core" area of the City would remain black. If the Board had fulfilled its constitutional duty in 1954-1956 and the schools were thereafter resegregated by massive changes in the racial makeup of the City, we would have another case.

[15]Former Superintendent William Kottmeyer testified that "a good many" white students exercised the continuation transfer option in order to remain in predominately white schools. The 1962 Civil Rights Commission report stated that over 40% of the black students assigned to schools other than the ones to which they had previously been assigned elected to remain in their former schools.

The unmistakable intent and effect of this policy was to preserve the pre-*Brown* system of school assignments.[16] Like the "freedom-of-choice plan" disapproved by the Supreme Court in *Green v. School Board of New Kent County, supra,* the continuation transfer option virtually guaranteed that the School Board plan would be an ineffective tool of desegregation. *See id.* at 440.

The foregoing demonstrates that the School Board's 1954-1956 plan did not meet the defendants' constitutional duty to disestablish the dual school system in the City of St. Louis. The Supreme Court's conclusion in *Columbus* is applicable to St. Louis as well: "Whatever the Board's current purpose with respect to racially separate education might be, it knowingly continued its failure to eliminate the consequences of its past intentionally segregative policies. The Board 'never actively set out to dismantle this dual system.' " *Columbus Board of Education v. Penick, supra* at 679,[17] quoting the district court's opinion in that case, 429 F.Supp. at 260.

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[16]The School Board asserts that the continuation transfer option was simply the extension of a long-standing policy that permitted a student to remain in a given school even though he moved his residence out of that school's attendance zone. We disagree. That policy, which would benefit the School Board by helping to keep the enrollment level at each school constant, is obviously not the same as the transfer policy included in the 1954-1956 plan. The latter policy, which would aid the School Board in no way other than to reduce public outcry by ensuring that no significant desegregation occurred, allowed students to defeat the purpose of the plan by electing to remain in their former school after the Board had changed the attendance zones for those schools.

[17]The defendants assert that the 1954-1956 Board plan was widely acclaimed by civil rights leaders. For example, the author of the 1962 Civil Rights Commission Report, Wylie H. Davis, described the 1954-1956 transitions as "solidly conceived and brilliantly carried off." We find no reason to disagree with the Davis statement. The problem is that the "transitions" he spoke of did not desegregate the school system. A careful reading of the report reveals that Mr. Davis recognized that the School Board plan had very little effect on the segregated nature of the school system despite the hopes some may have had for the new policies.

V. *POST-1956 SEGREGATIVE ACTS*

The dual school system in St. Louis, legally mandated before 1954 and perpetuated by the Board of Education's 1954-1956 desegregation plan, has been maintained and strengthened by the actions of the Board in the years since. The Board's steadfast adherence to a student assignment policy which did not desegregate the schools and its use of intact busing, school site selection, block busing, permissive transfers, and faculty assignments have preserved segregation in the school system.

1. *Student assignment policies.*

Perhaps the most significant segregative policy of the St. Louis Board of Education in the years since 1956 has been its adherence to the neighborhood school student assignment policy. Despite the Board's "continuing 'affirmative duty to disestablish the dual school system,' " *Columbus Board of Education v. Penick, supra* at 678, quoting *McDaniel v. Barresi, supra* at 41, the Board has continued a policy that, in 1979, still sends black students to black schools and white students to white schools.[18] This basically segregative policy, moreover, has been enhanced by successive and consistent Board action.

The first of these successive actions was the use of intact busing. "Intact busing" is a technique that daily sends an entire class of students, with their teacher, from an overcrowded school to a vacant classroom elsewhere. The technique was used to combat overcrowding in the pre-*Brown* era with white students being bused to white schools and black students to black schools. Because the 1954-1956 redistricting temporarily reduced overcrowding, intact busing was used sparingly from 1955 to 1957. In 1959, however, intact busing again became significant and over 1,000 students were so bused. This number grew to more

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[18]As we noted earlier, 82% of the black students currently attend "neighborhood" schools that are more than 90% black.

than 6,000 by 1963. The bused students were treated administratively as part of the school from which they came rather than the school to which they were sent. Consequently, they often arrived, recessed, ate lunch and departed on different schedules than the other students in the receiving school. They thus became an isolated subset of the school in which they were housed. Significantly, in the post-*Brown* era most of the students affected by this policy were black students sent to white schools.[19]

In 1962, a group of black parents complained about this policy to the Board of Education. Suit and countersuit were filed over the constitutionality of intact busing. These suits were dropped, however, when the opening of new schools and the Board's modification of its policy defused the issue.[20] By 1964, intact busing had ceased.

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[19]The district court found that the "intact busing policy had a disproportionate impact on black children * * * because black children * * * were bused more often than whites." *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1336. It did not, apparently, consider the fact that the black students so bused were maintained as separate entities in the host white schools as a part of the impact of this technique on the black students. This despite the fact that Dr. Clifford P. Hooker, an expert witness appearing for the Board of Education, acknowledged the detrimental effects of intact busing on both black and white children. *Cf. Jackson v. Marvell School District No. 22,* 425 F.2d 211 (8th Cir. 1970) (overturning "desegregation" plan that required students to remain with the teacher they had under segregated system.).

[20]The modification replaced intact busing with block busing, whereby students from certain blocks in the overcrowded school's attendance zone were bused to other schools and incorporated into those schools. As implemented, this policy, too, was to have segregative effects, as detailed later in this opinion.

Segregation in student assignment, however, continued. All ten of the new schools that opened in 1964 (thereby reducing the need for intact busing) were between 98.5% and 100% black at the time of opening. This reflects a durable pattern of segregative school construction and opening in the district. Of the thirty-six elementary schools that were either newly constructed or newly opened between 1962 and 1975, thirty-one were over 93% black on opening and four were over 94% white. Only one was integrated to any significant degree. This pattern is contrary to the teaching of the Supreme Court that "the responsibility of the local authorities * * * is to ensure that future school construction * * * [is] not used and [does] not serve to perpetuate * * * the dual school system." *Columbus Board of Education v. Penick, supra* at 678.

Another practice that had a foreseeable and predictable segregative effect is the Board's post-1964 busing policy. Despite the newly opened schools mentioned above, overcrowding in some schools in the district continued or recurred. The Board of Education responded by busing students from the overcrowded areas to underused facilities. Intact busing was replaced with block busing. *See* note 20, *supra*. Significantly, although overcrowding occurred in both black and white schools, and both black and white schools were available for transfer, there has been black-to-black, black-to-white and white-to-white busing, but very little white-to-black busing. Of the 3,190 black students bused because of overcrowding in 1973, 81% were bused to schools that were over 75% black. Similarly, of the 575 whites bused because of overcrowding, 85% were sent to schools that were over 94% white. Only twenty-seven whites (4.7% of the whites bused because of overcrowding) were sent to predominately black schools.

The district court specifically found that 63.7% of the blacks bused for overcrowding in 1974-1975 were assigned to schools that were between 90% and 100% black; 67% were similarly assigned in 1975-1976. *Liddell v. Bd of Ed., City of St. Louis, Etc., supra* at 1337. The court noted that one reason that there

was not more racial mixing in these transfers was that the overcrowded black schools were in far north St. Louis while the white schools were located in the south. It concluded that "[n]othing improper can be inferred from busing students to closer schools." *Id.* We cannot agree. First, the record simply does not sustain the finding that the differences in distance were significant. Second "the measure of the post-*Brown* conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system. * * * As was clearly established in *Keyes* and *Swann,* the Board had to do more than abandon its prior discriminatory purpose." *Dayton Board of Education v. Brinkman,* ____ U.S. ____, 61 L.Ed.2d 720, 734 (1979). In alleviating overcrowding, the Board authorized substantial student transportation. This transportation could have been used to help establish a unitary school system in St. Louis. Instead, it was used to perpetuate a dual system. Any findings to the contrary are clearly erroneous.

The permissive transfer policy also served to perpetuate segregation in the St. Louis school system. Originally adopted in the hope that it would help ameliorate the segregative consequences of neighborhood schools, the policy allowed students to transfer out of their assigned school to other schools in which space was available. Until 1974, however, parents had to assume responsibility for providing transportation. As a result, affluent white students were able to transfer away from integrated school assignments to all-white schools. In 1974, the policy was amended so that the school district provided transportation. Nevertheless, the policy had a segregative effect for many years.

2. *Faculty and administrator segregation.*

The perpetuation of a dual school system may be manifested not only in student assignment policies but also in the assignment of teachers and administrators. "Independent of student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of

teachers and staff, the quality of schools and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown." *Swann v. Charlotte-Mecklenburg Bd. of Ed., supra* at 18.

Before 1954, teachers and administrators were segregated by law. After *Brown,* the express policy of the Board was to maintain then-current teaching assignments. In addition, the acknowledged resistance of some school principals and the community was found by the district court to "have limited the degree of racial mixing of school faculties." *Id.* at 1346. Indeed, racial segregation of faculties has been as pervasive as student segregation.

In 1962, only thirty-three of the system's 1,272 black elementary school teachers taught in schools with less than a 90% black student enrollment, and only thirty-four of the 283 black high school and vocational teachers were assigned to schools that were less than 99% black. Ten years later, during the 1972-1973 school year, thirty elementary schools still had all-white faculties, twenty-seven elementary schools still had all-black faculties and ninety-one faculties were at least 90% one race. And this was at a time when the faculty was 46.4% white, 53.6% black district-wide.

The district-wide pattern of faculty segregation is dramatized by the assignment of faculty to newly opened schools. Eleven of the schools opening since 1962 had faculties that were 100% black upon opening, four had faculties that were 100% white and only four had faculties that were between 40% and 60% black. The evidence clearly indicates that black faculty members were assigned primarily to black schools and that white faculty members were assigned to white schools.

The distribution of black administrators throughout the district reflects a similarly race-conscious assignment pattern. The central office was desegregated by 1973. In the district of-

fices, however, administrators were clearly assigned on the basis of race. The Central-Vashon and Beaumont-Sumner districts, which were predominately black, were staffed 100% black at the district level; the Cleveland-Southwest District, nearly all-white in student population, was staffed 100% white at the district office. Further, there were no black administrators in racially identifiable white schools.

The district court, while acknowledging this pattern, concluded that the racial composition of faculty and administration did not influence the racial composition of the school. "Racial identifiability of schools is not now and was not in the past a result of the Board's failure to mandatorily achieve more racially balanced faculty." *Liddell* v. *Bd. of Ed., City of St. Louis, Etc., supra* at 1347 (footnote omitted). Rather, the district court assigned exclusive responsiblity for the racial identifiability of schools to the City's demographics. *Id.* We cannot agree. The record contains substantial expert testimony indicating that public perception of the racial identity of a school can be maintained as effectively by a one-race faculty as by a one-race student body and public perception of the racial identity of a school can be, and often is, a powerful factor in shaping the residential patterns of a neighborhood. By maintenance of a segregative faculty assignment policy, the St. Louis Board of Education encouraged the perpetuation of its dual school system.

VI. *OTHER FACTORS CONTRIBUTING TO SEGREGATION*

The district court, having erroneously concluded that the Board of Education discharged its duty to desegregate the St. Louis school system by adopting a neighborhood school plan and by refraining from discriminatory actions thereafter, went on to find that factors over which the Board of Education had no control are substantially responsible for today's segregation in the St. Louis school system. The most important factor is said to be the dramatic change in the demography of the City. These

demographic changes were found by the district court to have been caused by discriminatory housing, urban renewal and highway land acquisition policies of the federal government; state laws and policies mandating discrimination in housing;[21] discriminatory private policies, including red-lining and separate newspaper listings for "colored" housing; and general population movements unrelated to any specific governmental policies.

The initial problem with this finding is that it is based on the two erroneous conclusions noted in the preceding paragraph. The second problem is that it is not supported by the record. The facts are that most schools in the heart of North St. Louis were black in 1954 and remain black today, and that most schools in South St. Louis were white in 1954 and remain white today. The Board of Education has simply never dealt with this overwhelming reality. If the Board had dealt with the problem in 1954-1956 and had implemented a plan for integrating the schools in North and South St. Louis, we would have a different

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[21]The court stated:

> Prior to 1954 a pattern of racial housing segregation prevailed in the City and discriminatory restrictions against blacks were enforced by the courts and agencies of the State of Missouri. *Dolan et al. v. Richardson et al.*, 181 S.W.2d 997 (Mo.App.St.L.,1944); *Shelley v. Kraemer*, 335 Mo. 814, 198 S.W.2d 679 (en Banc, 1946) *rev'd*, 334 U.S.1, 68 S.Ct. 836, 92 L.Ed. 1161 (1947); and *Jones v. Alfred H. Mayer Co.*, 255 F.Supp. 115 (E.D. Mo. 1966); *aff'd*, 379 F.2d 33 (8th Cir. 1967), *rev'd*, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968).

Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1323.

> We note the date of the *Jones v. Alfred H. Mayer Co.* decision and add that some suburban communities in Missouri continue to try to enforce discriminatory housing restrictions against blacks. *See Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033 (8th Cir. 1979); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975); *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972)

case today. We would have to examine the question from an entirely different point of view. *See Pasadena City Bd. of Educ. v. Spangler,* 427 U.S. 424 (1976). But it did not; the schools remain segregated and we have no choice but to adopt a practical remedy to achieve an integrated school system.

We do recognize that many of the factors cited by the Court, including actions of the state and federal governments, have intensified racial segregation in North St. Louis. We have taken this fact into consideration in determining the appropriate remedy in this case. We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation.

VII. *THE REMEDY*

Segregation in the elementary and secondary schools in St. Louis now must be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.

1. *Remedial alternatives proposed by the parties.*

The major focus of the plan submitted by the Board of Education is the creation of junior high schools. Three or more junior high schools would be opened each year over a period of four years and as many of these as possible would be assigned equal numbers of black and white students. At this ratio of assignment, there would necessarily be some all-black junior high schools remaining. All the junior high schools would be aligned into feeder patterns designed to reduce racial isolation in the high schools.

The Board also proposed the creation of a new Business and Office Magnet High School, two specialty high schools, the expansion of enrollment at Metro High School and the converion

of O'Fallon Technical High School to a full-day comprehensive technical high school with an enrollment policy aimed at securing "appropriate representation of both races." The Board further proposed that the racially isolated schools be associated for special projects and activities, the purpose being to provide opportunity for significant interracial contacts and experiences. These proposals were designed to provide some racial mixing for the remaining all-black and all-white schools. The Board additionally suggested that it undertake a feasibiltiy study of an Educational Park, designed to house a variety of magnet and specialty high schools. It expressed the hope that the Park could be studied, designed and built in about four years.

The Board's plan did not purport to integrate grades kindergarten through six. The plan did provide, however, for the establishment of seven magnet elementary schools with proposed enrollments of 50% white and 50% black students. These magnet schools would offer various educational alternatives to the traditional classroom setting in the City's regular elementary schools. These schools, together with two magnet high schools, were established pursuant to the district court's order in April of 1977. The specialty and magnet schools currently enroll about 13% of the City's school population. The racial goals established by the Board for its magnet and specialty schools have not been met.[22]

The Board finally urged that if something more was required to desegregate the schools, the district court should require a metropolitan plan encompassing the neighboring two tiers of schools in St. Louis County. It argued that only such a plan would stabilize the schools in the City and the metropolitan area.

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[22]In the current school year (1979-1980), the secondary magnet school populations are approximately 65% black, and the elementary magnet schools range from 58% to 93% black. The special secondary schools range from 66% to 100% black, and the special elementary schools, excluding Lutheran Hospital, ranged from 15% to 100% black.

The Caldwell group proposed a plan prepared by Dr. Michael J. Stolee, Dean of Education at the University of Wisconsin, Milwaukee. Under the Stolee plan, using the techniques of pairing, clustering and boundary adjustments, each elementary and secondary school in the system would be brought into rough conformity with the overall 75% black-25% white racial mix of the school district. Schools whose existing black-white ratio is within 15% of the district-wide ratio would be unaffected by the plan. Under the plan, the high schools were projected to have from 63% to 80% black students; the elementary schools to have between 51% and 85% black students.

The original plaintiffs proposed a plan prepared by Dr. David L. Colton, Associate Professor of Education at Washington University, St. Louis. The Colton plan would convert the St. Louis public school system from a two-tier system (kindergarten through eight and nine through twelve) to a four-tier one (kindergarten through three, four through six, seven through nine and ten through twelve). The first tier schools would continue as "neighborhood schools." Second tier students would be housed in the same building as the first tier. Assignments to the second tier would be made to achieve a 55% black-45% white student population in as many second tier units as possible. The remaining second tier units would enroll only black students. Third tier students would be housed in existing school buildings adopted for use as junior high schools. The student assignment pattern for these schools would be designed to achieve a racial distribution of 60% black and 40% white. There would be no all-white junior high schools but approximately one-third of the junior high schools would continue to enroll only black students. Fourth tier students would be housed in seven high schools. Five of these schools would have a 60% black-40% white racial mix. Two would be all black. Student assignments would be made so that no student would attend both an all-black junior and senior high school. Every black student would thus receive at least one-third of his or her education

in grades four through twelve in an integrated environment. Every white student would be in an integrated school after the third grade. The City's special education programs would be combined with those in St. Louis County, and a desegregation planning group with representation from all groups in the community would be established. This planning group would focus on teacher training, administrative reassignment, community support and student response.

The United States Department of Justice took the position that either the Stolee plan or the Colton plan would desegregate the present dual school system. It also stated that integration could be achieved if a plan was developed in accordance with the views of its expert witness, Dr. Gary Allen Orfield. Dr. Orfield testified: (1) that currently integrated schools should be left alone and every effort should be made to stabilize them for the foreseeable future;[23] (2) that all white schools, and as many black schools as possible, should be integrated with a substantially even relationship (50% black-50% white) between minority and majority children, and that this be done at every grade level, but particularly at the elementary level;[24] (3) that specialized programs should be included in the neighborhood schools so that parents are assured that their children will not be locked in a slow-moving curriculum; (4) that free choice, intra and inter-

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[23]Dr. Orfield testified that

> when you have an integrated neighborhood with an integrated school, you should never close that school; * * * you don't bus children into that school, and you should do everything possible to continue to keep it as an integrated school, and to get people to notice that if they move into that neighborhood, they're not going to be moving into a transitional neighborhood, but they're going to be moving into one that has a stably integrated school.

[24]Dr. Orfield testified that it is best to begin the integration process in the first grade. He also testified that it is ill-advisded and unworkable to start desegregation at the junior high level. He stated:

> If you visit schools, you find a lot more difficulty in junior highs where students are generally in a difficult passage point in life anyway than you find in elementary schools which are much, much easier to desegregate.

district transfers should be permitted, particularly for black students who would be left in all-black schools[25] and that

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> * * * [T]here is also * * * stark evidence that the educational advantages from desegregation are through the schools that are * * * desegregated * * * from the first grade, so if I were going to choose one aspect of a school system to desegregate, junior high would probably be the last one, * * * the elementary schools would be the first one.
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> * * * *
>
> * * * [T]here are many reasons why this is probably true. One is that children in the first grade have very little achievement gap compared to what they have later.
>
> Another is that they have very little racial consciousness * * *.

Other expert witnesses agreed that black children will achieve academic gains in an integrated school, particularly at the elementary level. They disagreed as to the extent of the gains and whether there would be gains if the integrative experience occurred only at the junior high school level. The experts also agreed that white students did not suffer an achievement loss in an integrated school setting. *See* R. Crain & R. Mahard, DESEGREGATION AND BLACK ACHIEVEMENT (1977), wherein seventy-three studies on the effect of desegregation on black achievement were reviewed. "A majority of these studies conclude that desegregation has a beneficial effect on black achievement test scores. * * * A comparison of the 73 studies leads to one important conclusion: that desegregation is noticeably more likely to have a positive impact on black test scores if it begins in the earliest grades, and effects are especially likely to be positive for first graders," *Id.* at Abstract. *See also* Pettigrew, Useem, Normand & Smith, *Busing: A Review of "The Evidence,"* THE PUBLIC INTEREST, Winter 1973, at 88.

[25]Dr. Orfield testified that

> to encourage cross-district transfers, * * * there [should] be * * * [a] right to transfer to vacant spaces in the suburbs and also positive educational alternatives [should be] built into the metropolitan area on a voluntary basis * * *.
>
> * * * *
>
> The major limitation is that voluntary transfer plans never have a broad system-wide effect, but [they] would * * * be important [and would] give an opportunity to more children * * * to [begin] to develop some kind of in[t]er-racial contacts with some of the suburban school systems.

positive educational components should be built into the plan; (5) that magnet schools and specialty schools should be continued and made available to both City and suburban students, but only as an adjunct to a comprehensive desegregation plan;[26] (6) that school personnel should be integrated at every level of employment and be assigned in a way that will not racially identify schools; and (7) that the community should be deeply involved in developing, explaining and policing the integration plan.

Dr. Orfield agreed with the Board of Education that an interdistrict remedy funded by the State of Missouri would have the best chance of permanently integrating the schools in the metropolitan St. Louis area.[27]

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[26]Dr. Orfield testified:

> [A] Magnet School plan is a very feasible, workable approach to desegregation in a small city with a small ghetto or barrio [community] * * * .
>
> A Magnet School plan in itself has never been successful in desegregating a big city. It almost always produces no significant white transfers into predominantly black or Latino schools. * * * [I]t will not produce substantial desegregation without a compulsory plan backing it.
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> * * * [I]t is valuable in desegregation because it builds in educational choice for parents, and * * * you ought to take advantage of it in any good desegregation plan * * * .
>
> * * * *
>
> * * * Milwaukee, for example, has desegregated about two-thirds of its schools * * * largely through voluntary transfers because parents know that if they don't transfer voluntarily they'll be reassigned.

[27]Dr. Orfield testified:

> [T]he most stable kind of plan is a metropolitan-wide proportional enrollment plan * * * .
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> * * * *

2. *The constitutionally permissible alternatives.*

The plan proposed by the Board of Education will not effectively desegregate the public schools of St. Louis. It does little or

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> Anything that can be done to involve the suburban districts should be done.

In *Milliken v. Bradley,* 418 U.S. 717, 744-745 (1974), the Supreme Court stated that, in order for an inter-district remedy to be appropriate,

> it must be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation.

St. Louis County suburban school districts, pursuant to state law prior to *Brown,* collaborated with each other and with the City of St. Louis to ensure the maintenance of segregated schools. *See* Act of April 9, 1917, 1917 Mo. Laws 498 (repealed 1957) (providing for the "Colored Consolidated High School District" of St. Louis County); Act of February 17, 1865, §13,1865 Mo. Laws 170 (repealed 1957) (providing, *inter alia,* for the inter-district transfer of "colored children"). Included among the pre-*Brown* practices of these districts was the assignment and transportation of black students living in the suburbs to black schools in the City. Moreover, as noted in Part VI of this opinion, governmental policies may have intensified segregation in the St. Louis area. *See U.S. v. Bd. of Sch. Com'rs of City of Indianapolis,* 541 F.2d 1211 (7th Cir. 1976), *vacated and remanded,* 429 U.S. 1068 (1977), *reconsidered,* 573 F.2d 400 (7th Cir.), *cert. denied,* 439 U.S. 824 (1978), *on remand,* 456 F.Supp. 183 (S.D. Ind. 1978); *Newburg Area Council, Inc. v. Board of Ed., Jefferson Cty., Ky.,* 489 F.2d 925 (6th Cir. 1973), *vacated and remanded,* 418 U.S. 918 (1974), *reconsidered,* 510 F.2d 1358 (6th Cir. 1974), *cert. denied,* 421 U.S. 931 (1975), *further proceedings sub nom. Cunningham v. Grayson,* 541 F.2d 538 (6th Cir. 1976), *cert. denied,* 429 U.S. 1074 (1977); *Evans v. Buchanan,* 393 F.Supp. 428 (D. Del.), *aff'd,* 423 U.S. 963 (1975), *further proceedings,* 416 F.Supp. 328 (D.Del.), *stay denied,* 424 F.Supp. 875 (D. Del.), *appeal dismissed,* 429 U.S. 973 (1976), *modified and remanded,* 555 F.2d 373 (3rd Cir.) (en banc), *cert. denied,* 434 U.S. 880 (1977), *on remand,* 447 F.Supp. 982 (D. Del.), *aff'd,* 582 F.2d 750 (3d Cir. 1978) (en banc), *petition for cert. filed,* 48 U.S.L.W. 3097 (U.S. Oct. 20, 1978) (Nos. 78-671, 78-672).

nothing to integrate grades one through six. Black elementary schools will remain black and white elementary schools will remain white. Further, the plan unnecessarily delays desegregation at the junior and senior high school levels—the junior high schools would be integrated over a four-year period, the high schools over a seven-year period. These time periods are simply unacceptable after a delay of twenty-five years. Similarly, the Board's tentative proposal to establish an Educational Park at the high school level is a futuristic solution to a current problem. While such an institution could serve as a useful component of an otherwise valid plan, the tentative proposal to open a park four years hence is inadequate to meet the constitutional requirement to desegregate now. In short, the Board's plan offers too little too late.

The Stolee plan would desegregate both the elementary and the secondary schools, at least temporarily. The district court found, however, that the probable result of the implementation of the plan would be an all-black school system in a few years. In light of this finding, we do not require that the Stolee plan be implemented, but the Board remains free to adopt the plan, or those portions of it, that meet the constitutional standards set forth herein.

Having made these observations with respect to the Board's plan and to the Stolee plan, we have no alternative but to remand to the district court with instructions to take those steps necessary to bring about an integrated school system in accordance with the guidelines and time tables set forth below:

> a. The Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system.[28] In fulfilling this responsibility, the Board shall work with the par-

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[28]The costs of the plan shall be apportioned among the defendants as determined by the district court. *See* Part VI of this opinion.

ties of this lawsuit, a broadly based interracial committee to be named by the district court and an expert, or experts, to be named by the district court. The Board shall be required to submit to the district court its plan for integrating the school system within sixty days of the issuance of this Court's mandate. The district court shall promptly review the plan to ensure that it complies with the mandate of this Court. The plan shall be implemented no later than the beginning of the 1980-1981 school year under the direction of the district court.

(b) Voluntary techniques will not effectively desegregate the St. Louis school system. *See Liddell v. Caldwell, supra* at 772, note 8. The Board is, therefore, to be required to develop a system-wide plan for integrating the elementary and secondary schools of the district. On the basis of this record, two approaches appear to be constitutionally permissible and practical. *See Davis v. Board of School Commrs.*, 402 U.S. 33 (1971).

(1) *The Colton approach.* If this approach is to be followed, it must be modified so that all four tiers will be integrated. This modification may require an adjustment in the black-white ratios suggested by Colton.[29] Black students must be given a substantially equal opportunity to attend integrated schools during the years they attend the public schools.

(2) *The Orfield approach.* If this approach is to followed, the boundary lines and assignment patterns for schools that are presently integrated shall remain substantially as they are at present. *See United States v. School District of Omaha,* 521 F.2d 530, 546-547 (8th Cir.), *cert. denied,* 423 U.S. 946 (1975). For this purpose, a school with a black

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[29]Compulsory attendance at the kindergarten level is not required. Students attending this grade need not be included in the plan.

enrollment of between 30% and 50% shall be considered to be integrated.[30] The student populations of these schools shall be maintained at as close to these percentages as is possible for a reasonable period not to exceed five years.[31] The remaining white schools (those more than 70% white) in the district shall be integrated with a sufficient number of black schools to achieve student populations that are not to be less than 30% nor more than 50% black. The student populations of these schools shall also be maintained at these percentages to the extent possible for a reasonable period not to exceed five years. The integration may be accomplished by those techniques that have been approved by the Supreme Court or this Court. The burdens of integration shall be borne as equally as possible by blacks and whites. *Davis v. Board of School Commrs., supra* at 37; *Swann v. Charlotte-Mecklenburg*

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[30]The district court found that "stable integration in a particular school is generally achieved only when the percentage of blacks remains below 50%." *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1327. The expert testimony in this record indicates that the factors affecting the stability of an integrated school are numerous and vary from community to community. Among the important factors cited by the experts are: the availability and costs of other alternatives; the extent to which the integrated school system is supported by school administrators, faculty and community groups and leaders; and the quality of education offered in the integrated schools. On this record, we cannot disagree with the district court that a black student population at or below 50% in each school will contribute to the preservation of a racially unified school system in St. Louis.

The record also contains persuasive testimony that integration will be successful only if minority students are represented in numbers sufficient to reduce the feelings of racial isolation. While this number cannot be fixed precisely, we are convinced from this record as a whole that minority populations must be maintained at at least the 30% level.

[31]In view of the long period of racial discrimination in the St. Louis schools, a short period of mandatory stabilization is required to enable the desegregation plan to be effective. The time schedule imposed by this opinion is not a long-term "inflexible requirement." *See Pasadena City Bd. of Educ. v. Spangler, supra* at 434.

Bd. of Ed., supra at 25; *United States v. School District of Omaha, supra* at 547.

c. Each approach has its strengths and weaknesses. Unfortunately under either approach, some all or virtually all-black schools in North St. Louis will remain. The Board shall use other techniques to ensure students in all schools will receive equal educational opportunities. It shall seek the help of the state and federal governments in financing them.[32] These techniques may include the following:

(1) Developing and implementing compensatory and remedial educational programs. *See Milliken v. Bradley,* 433 U.S. 267 (1977).

(2) Developing and implementing programs providing less than full-time integrated learning experiences.

(3) Developing and implementing a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis county. The Board shall seek the cooperation of such school districts, the State Board of Education and the United States in developing and implementing such a plan. *See Liddell v. Caldwell, supra* at 774.

(4) Maintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education.

(5) Establishing an Educational Park.

(6) Continuing and expanding a policy of permissive transfers in the district.

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[32]The consent decree required the parties to study the feasibility of curriculum improvements to improve the quality of education throughout the system. We require that this study be continued and that compensatory and remedial programs be instituted.

d. No inter or intra-district permissive transfer shall be permitted which will increase the segregated nature of either the sending or receiving school. *See Booker v. Special School Dist. No. 1, Minneapolis, Minn.*, 351 F.Supp. 799, 811 (D. Minn. 1972).

e. Transportation costs incurred pursuant to the provisions of an approved plan will be paid by the Board of Education.[33]

f. The consent decree, insofar as it pertains to faculty integration, shall be fully implemented and additional steps taken to ensure that school personnel at every level will be integrated.

g. It shall be the responsibility of the district court to assure that "future school construction and abandonment are not used and do not serve to perpetuate or reestablish the dual system." *Swann v. Charlotte-Mecklenburg Bd. of Ed., supra* at 21. Accordingly, any construction of new schools, or addition to old schools other than that contemplated in the plan, shall be submitted to the district court for approval. *See Booker v. Special School Dist. No. 1, Minneapolis, Minn., supra* at 811.

h. The district court shall retain jurisdiction to ensure that the plan effectively integrates the entire St. Louis school system and to ensure that the plan is, in fact, being carried out. To assist the court in its monitoring function, the court's order should include reporting provisions requiring that reports on the operation of the plan be filed periodically with the court for a period of at least three years.

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[33]We note that federal funds may be available to the school district to help defray the cost of this transportation under the Emergency School Aid Act. At oral argument, the State's attorney assured the Court that state aid would also be available and would pay up to 80% of the district's student transportation costs. *See* Mo.Ann.Stat. §163.161 (1979).

3. *Attorneys' fees.*

The Liddell group "and other intervening plaintiffs" requested that the district court allow them their costs and attorneys' fees. The record is unclear as to whether the Caldwell group was among those making such a request. The district court denied all of these requests, apparently on the theory than none of the plaintiffs prevailed below. *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1366, 1390. Both the Liddell and Adams groups appeal this denial, claiming that they are entitled to attorneys' fees under 42 U.S.C. §1988. On the basis of our holdings on the merits, we affirm the denial as to the Adams group and reverse as to the Liddell group. On remand, the district court shall determine reasonable attorneys' fees for the Liddell group (and for the Caldwell group, if they requested them) in accordance with the general principles set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See also Cleverly v. Western Elec. Co.*, 594 F.2d 638 (8th Cir. 1979); *Brown v. Bathke,* 588 F.2d 634 (8th Cir. 1978).

The appellants requesting attorneys' fees on appeal shall submit a motion to that effect within thirty days of the filing of this opinion. Documentation of their claims shall be included. The appellees shall then be given fifteen days in which to file their objections to these motions.

Reversed and remanded for further proceedings consistent with this opinion. The mandate of this Court shall issue forthwith.

* * *

[Appendices to opinion omitted.]

Craton Liddell et al.,

Plaintiffs,

v.

The Board of Education of the City of St. Louis, Missouri et al,

Defendants.

No. 72-100C(C).

UNITED STATES DISTRICT COURT,

E.D. Missouri, E.D.

May 21, 1980.

Supplemental Findings of Fact and Conclusions of Law June 3, 1980.

ORDER

MEREDITH, District Judge.

This cause came to be heard pursuant to the remand, opinion, and order of the United States Court of Appeals for the Eighth Circuit handed down on March 3, 1980. After conferences with all counsel and a hearing on the Desegregation Plan filed by the defendant Board of Education of the City of St. Louis on May 2, 1980, and the Court, having considered the positions and objections of the parties, being duly advised in the premises, with findings of fact and conclusions of law to follow, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The defendant Board of Education of the City of St. Louis ("Board") shall not discriminate on the basis of race in the operation of its public schools.

2. The proposed plan of school desegregation submitted by the defendant Board on May 2, 1980, amended on May 8, May 12 and May 15, 1980, is hereby approved, with the modifications required by this Order, for implementation at the commencement of the 1980-81 school year. The Board is ordered to immediately undertake all steps necessary to the smooth and efficient implementation of the plan and shall operate its schools in accordance with the said Desegregation Plan and the further directions contained in this Order. No changes shall be made in the plan without the prior approval of this Court.

3. The defendant Board is hereby directed to keep the Adams school open and operating during the 1980-81 school year as a grade K-8 school. On or before January 1, 1981, the Board shall prepare and submit to the Court a proposal for the future use of the Adams school which includes a cost analysis for any renovation which may be necessary and an evaluation of the efforts necessary to maintain the Adams school as a stably integrated facility.

4. The Board's desegregation budget, as set forth in the Plan, is approved subject to the requirement that continued efforts be made to reduce the actual costs of implementation, but without impairing the quality of the Plan's components.

5. With respect to that part of the desegregation budget pertaining to pupil transportation costs, the Board and the State defendants are directed to investigate further ways to reduce the actual costs of pupil transportation and report to the Court on these efforts by June 16, 1980, with due regard being given to the safety of the children and the quality of service.

6. The defendant Board is authorized and directed to transfer the sum of $4,668,000 from its debt retirement account to the building and renovation account to be applied to such building modifications as are needed to expand the magnet schools and achieve the conversion to the grade configuration described in the Desegregation Plan.

7. The State of Missouri is ordered to fund one-half of the cost of implementing and operating the Board's Desegregation Plan; in no event shall the State be required to pay more than $11,076,206 which is one-half of the Desegregation budget herein approved by the Court for the school year 1980-1981. In the subsequent years, as long as the Plan remains in effect, the State shall pay one-half of the cost of desegregation, subject to such adjustments as the Court may deem necessary or proper. The sum ordered to be paid herein will include the additional dollars for transportation requested in the Desegregation budget. Payments shall be made in four equal installments at the same time as regular payments. No payment by the State for this purpose shall be made from the school Foundation Program. Any amounts overpaid will be refunded to the State or credited on the next payment. Payment by the State to the Board of Education of the City of St. Louis for the costs of the Desegregation Plan shall be in addition to the payments heretofore made by the State to the said Board, as well as any increase in those sums as the Board would have received absent this Order. The State is directed to report to the Court by July 1, 1980, the amount of funds available and when they will be paid.

8. The defendant Board is applying to the United States Department of Education for funds under ESAA which will be used to offset the cost of certain components of the Desegregation Plan. The said Department of Education is required and urged to expedite the processing of these applications of the Board in order to assist the Board in complying with the mandate of the Eighth Circuit and the requirement therein stated that the Plan be implemented no later than the beginning of the 1980-81 school year. The Department is requested to report about its action hereunder by July 1, 1980.

9. The defendant Board shall continue the study of the feasibility of curriculum improvements to improve the quality of education throughout the system.

10. The defendant Board shall continue to study and evaluate the compensatory and remedial educational programs described in the Desegregation Plan and shall recommend for approval by the Court such modifications and improvements as will appear advisable and proper to achieve the goals stated by the appellate court.

11. No inter- or intra-district permissive transfer shall be permitted which will increase the segregated nature of either the sending or receiving school.

12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:

a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

b) To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

d) To develop and submit to the Court by November 1, 1980, in conjunction with the Community Development Agency of the City of St. Louis, a suggested plan for insuring that the operation of federally-assisted housing programs in the St. Louis metropolitan area will facilitate the school desegregation ordered herein.

e) To develop and submit a plan to the Court by July 1, 1980, which expands programs and schools so that all the schools in the City of St. Louis may be eligible for Title I funding for the year 1980-81 under Title I of the U.S. Elementary and Secondary Education Act of 1965.

13. The defendant Board shall assign its faculty and staff in accordance with the following provisions:

All principals, teachers, and other certificated staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for black students or white students. Commencing with the 1980-81 school year, and continuing yearly thereafter for the period inclusive of 1984-85, the Board shall assign the staff described above so that the ratio of black to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system. For the purpose of this provision, "substantially the same" means within plus or minus five percentage points of the respective ratio in the entire school system or two individuals, whichever is more.

The same criteria shall apply to non-certificated personnel.

The Board shall, to the extent necessary to carry out its Desegregation Plan, direct members of its staff, as a condition of continued employment, to accept new assignments.

14. On October 30, 1980, on March 31, 1981, and on the same dates annually thereafter until further order of the Court, the Board shall file with the Court a report setting forth the following information:

(a)(i) The number of students by race enrolled in the school district;

(ii) The number of students by race enrolled in each school of the district;

(iii) The number of students by race enrolled in each classroom in each of the schools in the district as well as the race of the teacher in each such classroom.

(b)(i) The number of full-time teachers by race in the district;

(ii) The number of full-time teachers by race in each school in the district;

(iii) The number of part-time teachers by race in the district;

(iv) The number of part-time teachers by race in each school in the district.

(c) Descriptions of the requests and the results which have accrued, by race, under the majority to the minority transfer provision which is a part of the Plan.

(d) Statement of the number of permissive transfers granted since the Plan became effective, the race of the students who were granted such transfers, and the school district to which the transfers were allowed.

(e) Brief description of any present or proposed construction or expansion of facilities.

(f) Statement whether the Board has sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 since the Plan became effective.

15. All construction of new schools, additions to old schools, closing of existing schools, sales or leases, shall be submitted to this Court with notice given to all parties, and shall not be carried out without prior approval of this Court.

16. A broadly based Monitoring Committee of citizens residing in the City of St. Louis will be appointed by the Court to assist in the implementation of the Desegregation Plan, providing an ongoing review, reporting all the aspects of the Plan, identifying aspects requiring special attention and making recommendations to the Board with regard to any such matter. The Monitoring Committee will have full access to the Board and to the Court and shall report to the Court on a regular basis.

17. Dr. Gary Orfield, who has assisted so well this Court in connection with the Desegregation Plan, shall continue to assist this Court as its expert with regard to the implementation phase and further will provide assistance to the Monitoring Committee and to the parties particularly in connection with the plan of inter-district cooperation and the development of a vocational program for city and county combined. The expenses and fees for these services shall be paid one-half by the State and one-half by the Board.

18. Defendant Board shall seek the assistance of civic groups, including business, labor, religious, and parents' groups, in informing the community of the essential facets of the Desegregation Plan and enlisting the maximum public support of all sections of the community to insure a smooth and effective operation of the Plan. All persons concerned shall be guided by the consideration that the widest acceptance by the community is essential to the success of the Plan.

19. The Court will not grant any stay of this Order.

20. The Court retains jurisdiction of this action to ensure that the provisions of this Order are effectively being carried out.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

These Findings of Fact and Conclusions of Law supplement the Court's Order of May 21, 1980, filed on that day.

Findings of Fact

1. On March 3, 1980, the United States Court of Appeals for the Eighth Circuit issued an opinion reversing the opinion filed by this Court, remanding it to this Court and ordering a plan of desegregation to be filed within 60 days. The opinion of the Court of Appeals placed primary responsibility for drawing this plan with the Board of Education of the City of St. Louis. This Court immediately requested the attorneys for all parties to meet together on Thursday, March 13, 1980, and to meet with the Court on Friday, March 14, 1980, in order to consider ways and means of implementing the mandate of the U.S. Court of Appeals.

2. The Court met with the attorneys on Friday, March 14, 1980, after they met together on March 13, and appointed a group of 20 citizens of the City of St. Louis, 10 white and 10 black, to form a Citizens Committee from those names suggested by the lawyers. The Court selected as chairman of the Citizens Committee Edward T. Foote, Dean of the Law School of Washington University. This Committee worked without compensation. The Citizens Committee met on March 21, 1980, with the Court and with Milton Lewis, Regional Director of the Community Relations Service of the Department of Justice; Dr. Albert L. Walker, Assistant Commissioner of Education of the Department of Education of the State of Missouri; and Dr. Robert Wentz, Superintendent of the Board of Education of the City of St. Louis, all of whom had members of their staffs present, and Dr. Gary Orfield, who had been appointed as the expert by the Court. All members of the Citizens Committee and Dr. Orfield had been sent copies of the opinion of the United States Court of Appeals for the Eighth Circuit in this cause and were familiar with its contents. The Committee met in constant session for five days a week from March 21, 1980 through May 1, 1980. There was a constant flow of information from the School Board's committee and from Dr. Orfield to the Citizens Committee. This Committee had a great input on the Plan

drawn by the School Board, received input from the community, and did an excellent job. The Committee selected Charles Brown to serve as vice-chairman and Anita Bond to serve as secretary.

3. The defendant Board of Education of the City of St. Louis, within a few days of the receipt of the opinion, order, and mandate of the appellate court, concluded that no review of the appellate court decision should be sought. It established an internal committee of 14 administrators, teachers, and other personnel who remained in constant session until the final plan was filed on May 2, 1980. In the course of their investigation and assembling of data, five members of the internal committee visited the school districts of Milwaukee, Louisville, and Columbus, Ohio. Tentative plans were filed from time to time between March 3, and May 2, 1980. Copies of these plans were furnished to Dr. Gary Orfield, the Citizens Committee, and were published in the daily newspapers and the television media for the purpose in informing the citizenry. The School Board Plan was unanimously approved by all twelve members of the Board of Education of the City of St. Louis. Dr. Orfield approved the Plan with minor recommendations, and on May 8, 1980, the Board of Education of the City of St. Louis accepted Dr. Orfield's recommendations and filed an amendment to the Plan on May 8, 1980.

4. The Citizens Committee filed a report with the Court. Some of its suggestions had been adopted by the School Board; some had not. Dr Orfield filed a report with the Court. The United States, which had intervened as a party plaintiff, supported the amended Desegregation Plan.

5. The Board of Education of the City of St. Louis considered all the plans described in the opinion of the Court of Appeals and concluded that neither the Stolee nor the Colton Plan was appropriate in the St. Louis situation. The Court of Appeals found that based upon the evidence, an interdistrict remedy has

the best chance of permanently integrating the schools in the metropolitan St. Louis area. All parties and this Court generally agree with this proposition.

6. This Court has heretofore made a finding in its original opinion that implementing the Stolee Plan would result in an all black system in a few years. Because of this finding the Eighth Circuit did not require that the Stolee Plan be implemented.

7. The Colton Plan was found by the Eighth Circuit to be in part constitutionally defective. In addition, its application to the enrollment composed of 76 percent black and 24 percent white students would allow black students to spend only a few years in an integrated school with the balance of their education required to be spent in segregated schools. This Court finds, based on the evidence, that transferring students from an integrated school to a one-race school, as advocated in the Colton Plan, would have a detrimental effect upon students and would be educationally unsound. It also would fail to achieve effective desegregation.

8. The Orfield approach was found to be permissible by the Eighth Circuit. The School Board also selected certain features of the Colton approach in its Plan. The Court of Appeals in its opinion found that a school with a black enrollment between 30 and 50 percent shall be considered to be integrated and that with the system which has a ratio of 76 percent black and 24 percent white students this compels the continuing existence of some all black schools.

9. The cost of implementing the Desegregation Plan in the St. Louis public schools is estimated to be $22,152,413 for the 1980-81 school year. This figure is in excess of the normal budget which exceeds $125,000,000 annually plus $33,000,000 received from federally funded programs. Based on the testimony before the Court, the Court finds the additional $22,152,413 to be a reasonable figure for the cost of implementing this Plan.

10. The State of Missouri, through the Department of Education, testified that under its regulations it pays 80 percent of transportation costs. However, the maximum cost it will pay is 125 percent of the average cost throughout the entire State of Missouri, which includes rural schools, and the cost of transportation in the City of St. Louis is about twice the cost of transportation in other places in the state. Under these circumstances, the amount the State of Missouri will pay for transportation is considerably less than half of the cost of transportation in St. Louis. For example, the cost of transporting a student every day throughout the school year in St. Louis is $515 per year. The statewide average is $147 per student per year. The State will only pay 125 percent of $147. The cost in Kansas City is $249 per student per year. This Court in its Order has requested the State of Missouri, the St. Louis School Board, and the United States to examine transportation costs to see if they can be reduced and to report to the Court by June 16, 1980.

11. The components of the Desegregation Plan are educationally sound and satisfy the requirements of the opinion, decree, and mandate of the Court of Appeals with regard to integrating the enrollment in the schools through the adoption of clustering in the elementary schools and by reassignment and transportation in the high schools. Existing magnet schools will be continued and six new magnet schools added. A variety of specialty programs will be offered to all students in the district. Development and enrichment programs, which will include remedial and compensatory features but will not be limited to students with low achievement test scores, will be offered in those schools in North St. Louis which cannot be integrated because of heavy imbalance in the racial composition of the enrollment in the district. Further, the Plan sharpens the provisions applicable to permissive transfers and encourages broader use of this technique, commits the efforts of the Board to seek and develop interdistrict plans of voluntary cooperation with school districts of St. Louis County, adopts a "Singleton" type

faculty assignment plan, provides for regular reporting to the Court, monitoring of the Plan, and citizen participation in the implementation stage. The Court finds that these provisions comply with the requirements of the mandate of the Eighth Circuit and that they constitute a sound and reasonable response to that mandate. Indeed, all of the improvements in the instructional area, including the conversion to middle schools, will assist in remedying the educational deprivations which resulted from the dual system which the Court of Appeals found to have existed. In addition, these improvements in the quality of education will encourage students, both black and white, to remain in the system.

12. The State of Missouri, which together with State officials and the State Board of Education was joined as a defendant, is jointly and severally liable with the defendant Board for the costs pertaining to the Desegregation Plan. The State of Missouri, which prior to 1954 mandated school segregation, never took any effective steps to dismantle the dual system it had compelled by constitution, statutory law, practice and policy. The State of Missouri is liable for the de jure segregation which existed in the St. Louis Public Schools. Thus, as recognized in the Court of Appeals opinion, it is within the equitable power of this Court to require the State to pay a portion of the costs of desegregation. In the light of the financial position of the district, the nature of the violations committed by the parties, and all the appurtenant circumstances, it is appropriate that the State be required to pay one-half of the total costs to implement the Desegregation Plan for the public schools of the City of St. Louis.

13. For the school year 1980-81 these desegregation costs are estimated to amount to $22,152,413 and the State share of these costs is $11,076,206. Any part of said sum of $11,076,206 which is not expended by the Board for the purposes of the Desegregation Plan should be refunded by the Board to the State. Further investigation should be undertaken by the defendants to deter-

mine whether the cost of pupil transportation may be reduced without adverse effect upon the safety of the children and the quality of service. The State should have discretion in the determination of the source or sources of the State funds with which to pay its share of the costs except that no payment for this purpose should be made from the school Foundation Program, which is essential to the operation of all school districts throughout the state.

14. The other 50 percent should be paid by the Board from the following sources: The Board has funds available in the building service fund which was established for the retirement of bonds heretofore issued for the purpose of purchasing, erecting, furnishing and repairing school buildings. As of June 30, 1980 there will be in said fund an excess balance which will make it possible, without jeopardizing the district's ability to meet its bond repayment objectives, to apply the sum of $4,668,000 to the payment of the building modifications which are needed to expand the magnet and other alternative schools and achieve the conversions to the grade configuration described in the Desegregation Plan. The sum necessary to provide the remaining funds needed should consist of the federal funds which the Board should receive under the ESAA program and under other federal programs pertaining to providing financial assistance for the desegregation of the public schools.

15. The Board has received substantial funding under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 241a *et seq.*) for the last several years. Title I is a program of federal financial assistance which provides funding for remedial programs in schools with concentrations of students from economically disadvantaged backgrounds. During the 1979-80 school year 118 of the 134 schools in the St. Louis school system were eligible for Title I programs. The 16 schools which did not have sufficient concentrations of low income students to qualify under Title I were all located in effectively all-white areas of the City. Under the Board's Plan each of these sixteen schools will either be closed or desegregated.

It is important that students and schools previously eligible for Title I programs not be deprived of the benefits of those programs because of the implementation of a school desegregation plan. Every effort should be made to maximize the number of Title I eligible schools within the statutory framework of Title I.

16. Considering the school closings, number of students transported, distance of transportation, and other facets of the Desegregation Plan of the Board taken as a whole under all the circumstances present here, the burden of desegregation will be borne as equally as possible.

17. The existing dual system of vocational education split between the City and St. Louis County is neither educationally sound nor administratively efficient. These systems, established in 1965 and 1967, are further evidence of the continuing failure of the State to take any effective measures to disestablish the dual system in the State. The State has the power to effectively merge these systems. Its failure to exercise that power is part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated.

18. As the Court of Appeals noted, "many factors . . . including actions of the state and federal government, have intensified racial segregation in North St. Louis." It is critical that future actions in the housing area of all government bodies, federal, state and local, facilitate and not hamper school desegregation. Given the past history of federally assisted housing programs in the St. Louis area, it is necessary that a specific plan to facilitate and not hamper school desegregation be developed by the appropriate government bodies.

19. The Adams school shall remain open and operating for a period of one year during the 1980-81 school year as a grade K-8 school on an experimental basis.

Conclusions of Law

1. In the pending proceedings on remand of this cause pursuant to the opinion, decree, and mandate issued by the United States Court of Appeals for the Eighth Circuit on March 3, 1980, the issue for adjudication by this Court is whether or not the Desegregation Plan submitted by the defendant Board of Education of the City of St. Louis on May 2, 1980, as amended, meets the requirements set by the appellate court in its aforesaid opinion, decree, and mandate.

[1] 2. Upon examination of the Desegration Plan filed by the Board as aforesaid, and having considered the report of the Court's expert, Dr. Gary Orfield, filed herein on May 5, 1980, and the evidence adduced by the parties, it is the conclusion of this Court that the said Desegregation Plan, as amended, meets the requirements of and complies with the opinion, decree, and mandate of the Eighth Circuit and is sound and feasible under the circumstances. It should also be noted that the United States, which intervened in this cause at the request of this Court pursuant to the suggestion of the appellate court, and took the position of plaintiff intervenor, directly supported the Board's Desegregaton Plan, as amended, as being in compliance with the mandate of the Eighth Circuit.

3. The Court recognizes that the Board's Plan, although it conforms to the Court of Appeals' mandate, will not provide a fully desegregated education for every black child in the school system. However, the Board's Plan, developed under the Orfield approach, holds the promise of providing the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation," *Davis v. Board of School Commis,* 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971). Included in the "practicalities" of this case is the current absence of suburban school districts amongst the parties of record. No suburban school district is now a party to this case and none can be ordered to participate until its rights have been adjudicated.

4. The Board in its plan has proposed a "Singleton" type faculty assignment plan. *See Singleton v. Jackson Mun. Sep. Sch. Dist.*, 419 F.2d 1211, 1217-18 (5th Cir. 1970). Such plans have been universally recognized as an appropriate method of eliminating the racial identifiability of school facilities in a desegregation school system.

[2] 5. The post-*Brown* Fourteenth Amendment obligation of a State that has operated a legally imposed racially dual school system is clear. *See, e.g., United States v. State of Missouri*, 363 F.Supp. 739, 747 (E.D.Mo.1973), *aff'd in relevant part*, 515 F.2d 1365 (8th Cir. 1975), *cert. denied*, 423 U.S. 951, 96 S.Ct. 374, 46 L.Ed.2d 288 (1975):

> A state, such as Missouri, which has in the past operated a racially dual system of public education, pursuant to state constitutional and statutory requirements [*and continuing policy, practice, custom and usage*] is, and has been since 1954, under an additional constitutional obligation to take such affirmative measures as are necessary to disestablish that dual system and eliminate the continuing vestiges of that system. (Emphasis added.)

Upon the decision in *Brown II*, 349 U.S.294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), it became the constitutional duty of the defendant State of Missouri to obliterate all vestiges of such state-imposed segregation. This obligation, as fleshed out in *Brown II*'s progeny, required the state "to do more than abandon its prior discriminatory" conduct. *Dayton Bd. of Educ. v. Brinkman*, 443, U.S. 526, 538, 99 S.Ct. 2971, 61 L.Ed.2d 720 (1979) (*Dayton II*). Rather, the State, and, upon its default, now the Court, has the duty "[to] eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154, 85 S.Ct. 817, 822, 13 L.Ed.2d 709 (1965). *See also Dayton II, supra; Columbus Bd. of Educ. v. Penick*, 443, U.S. 449, 458-61, 99 S.Ct. 2941, 61 L.Ed.2d 666 (1979); *Milliken v. Bradley*, 433 U.S. 267,

97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) (*Milliken II*); *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and companion cases; *Green v. County School Bd.*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), and companion cases. As the Supreme Court squarely held in *Milliken II, supra,* the Fourteenth Amendment requires responsible "state officials . . . to take the necessary steps 'to eliminate from the public schools all vestiges of state-imposed segregation.'" 433 U.S. at 289-90, 97 S.Ct. at 2762.

[3] 6. In sum, the State defendants stand before the Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty. Their efforts to pass the buck among themselves and to other state instrumentalities must be rejected:

> The State cannot escape responsibility for the racial discrimination disclosed in this case or the obligation to correct the effects of such discrimination by neatly compartmentalizing the authority and responsibilities of its various instrumentalities and then contending that no single instrumentality is wholly responsible for the unlawful segregation or has the power to correct the unlawful segregation.

United States v. State of Missouri, supra at 748. Since "[t]he primary responsibility for insuring a constitutional structure of public education is the state's, . . . it is appropriate for the Court to order the state" to affirmatively participate in remedial efforts, *id.* at 749, including the provision of funding, to the extent necessary, for the desegregation efforts ordered by the Court. *See, e.g., Milliken II, supra; United States v. Missouri, supra; Evans v. Buchanan,* 447 F.Supp. 982 (D.Del.), *aff'd,* 582 F.2d 750 (3d Cir. 1978), *cert. denied,* ____ U.S. ____, 100 S.Ct. 1862, 64 L.Ed.2d 278 (1980).

7. The State of Missouri defendants have been found and held liable with the Board of Education of the City of St. Louis for the segregated conditions in the St. Louis public schools. The State should bear an appropriate share of the cost of implementing the Desegregation Plan. *Milliken v. Bradley,* 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977). *See also, United States v. State of Missouri, supra; Evans v. Buchanan, supra,* and *United States v. Board of School Commissioners,* 456 F.Supp. 183, 191-192 (S.D.Ind.1978), *aff'd,* No. 78-1800 (7th Cir., April 29, 1980).

APPENDIX H

CONSTITUTION OF THE UNITED STATES

Article I

THE LEGISLATIVE DEPARTMENT

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

* * *

Section 8. The Congress shall have power: To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

* * *

Article III

THE JUDICIAL DEPARTMENT

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority;

* * *

Article IV

Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence.

Article VI

* * *

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

* * *

Amendment IX

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

28 U.S.C. § 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

CONSTITUTION OF MISSOURI

Article X

TAXATION

Section 16. Taxex and state spending to be limited—state to support certain local activities—emergency spending and bond payments to be authorized. Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in sections 17 through 24, inclusive of this article.

Section 22. Political subdivisions to receive voter approval for increases in taxes and fees—rollbacks may be required—limitation not applicable to taxes for bonds. (a). Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base

of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

TAXATION—SCHOOL DISTRICTS

HOUSE BILL NO. 310

AN ACT

To repeal section 52.260, RSMo 1978, and sections 144.701, 163.087 and 164.013 of an act proposed by initiative petition and submitted as proposition C and approved by vote of the people of the state at the general election held November 2, 1982, for the purpose of adjusting and clarifying provisions of law relating to moneys for schools, and to enact in lieu thereof five new sections relating to the same subject, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

* * *

144.701. 1. The revenue derived from the rate of one cent on the dollar of the tax imposed by sections 144.010 to 144.430 and sections 144.600 to 144.745 which shall be deemed to be local tax revenue, shall be deposited by the state treasurer in a special

trust fund, which is hereby created, to be known as the "School District Trust Fund." The money in the fund shall be distributed to the public school districts of the state in the manner provided in section 163.087, RSMo, and shall be appropriated and used

* * *

163.087. 1. Money in the school district trust fund shall be distributed to each six-director, including special districts, urban and metropolitan school district in the state in the same ratio that the number of eligible pupils in the district bears to the total number of eligble pupils in all such school districts for the preceding year. As used in the preceding sentence, the term "eligible pupils" has the meaning ascribed to it in section 163.011, RSMo. In addition, each such district which is providing an approved program for pupils residing on federal lands shall receive an amount which shall be determined as follows: An eligible pupil count for pupils residing on federal lands shall be calculated separately for the district in the manner provided in section 163.011, treating such pupils as residents of the district for this purpose. Such eligible student count shall be multiplied by one-half of the amount to be received by the district per eligible pupil not residing on federal lands.

* * *

3. Money received by a school district from the school district trust fund shall be deemed to be local tax revenue derived for the same fiscal year in which the money is received, for the teachers, incidental and building funds and may be deposited to such funds of the district in such proportions as the school board determines provided a minimum of seventy-five percent of one-half of such funds received shall be deposited in the teachers fund. The reduction in the operating levy pursuant to section 164.013, RSMo, shall be made proportionally in the funds where the remaining one-half of the money from the school district trust fund is deposited. In the calculation of state

aid for the district under the provisions of section 163.031, RSMo, fifty-seven percent of one-half the amount received by the district in the first preceding year shall be deducted from the minimum guarantee in the same manner that is prescribed in such section for deduction from the amounts received by the district from fines, forfeitures, escheats and intangible taxes.

164.013. Each year in which the revenue from the rate of one cent on the dollar of the state sales is collected for distribution under the provisions of section 163.087, RSMo, the school board of each six-director, including special districts, urban and metropolitan school district, after determining its budget for the school year and the rate of levy needed to produce the required revenue as provided in section 164.011, and after making any other adjustments to the levy that may be required by any other law, shall reduce the total operating levy in an amount sufficient to decrease the revenue it would have received therefrom by an amount equal to fifty percent of the estimated sales tax revenue excluding the sales tax revenue estimated to be received by the district attributable to pupils residing on federal lands and excluding the amount of sales tax revenue estimated to be necessary to offset the loss of property tax revenue to the school district under the provisions of section 2 of this act. Loss of revenue from state assessed railroad and utility distributable property shall be considered in lowering the rate of levy to comply with this section. In the event that in the immediately preceding year the school district actually received more or less sales tax revenue than estimated, the school board shall adjust its operating levy for the current year to reflect such increase or decrease. Adjustments in the tax rate of a school district pursuant to the provisions of this section shall in no way affect the eligibility of claimants for benefits, or the amount of claimants' benefits, under the provisions of sections 135.010 to 135.035, RSMo. Such claimants shall, if they are otherwise qualified, receive the benefits to which they were or would have been entitled in the year prior to the effective date of this act. There shall be transferred from the school district trust fund to the

general revenue fund an amount equal to the difference in the amount paid or credited or which would have been paid or credited to individuals qualifying under sections 135.010 to 135.035, RSMo, in the year prior to the effective date of this act and the amount paid or credited under the provisions of such sections each year thereafter. The director of revenue shall certify the amount payable from the school district trust fund to the general revenue fund to the state treasurer, the commissioner of administration and the state board of education on or before the first day of each month. Any school district required to reduce its total operating levy under the provisions of this section shall not become ineligible for state aid under the provisions of section 163.021, RSMo, because of such required reduction. In the event a district fails to reduce its operating levy in compliance with this section, an amount equivalent to the amount by which the district fails to reduce its levy shall be deducted from the district's apportionment of state aid under the provisions of section 163.031, RSMo, for the following year.

* * *